

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 4270 OF 2021

1. Manohar s/o Shankar Gulve, aged about 67 years, Occ. Business and Cultivator,
2. Kamlakar s/o Manohar Gulve, aged about 40 years, Occ. Business,

Both R/o Wadod Chatha, Post
Bharadi, Tah. Sillod, District –
Aurangabad

.... **PETITIONERS**

// **VERSUS** //

Basant Agro Tech (I) Ltd., A
Registered Company, Registered with
the Registrar of Companies, through
its Manager & Constituted Attorney
Shri Ashish Kamlakar Hote, aged
about 40 years, Occ. Service, r/o
Bhartia Bhavan, Tajnapeth, Akola,
Tah. And District – Akola.

.... **RESPONDENT**

Shri A.S. Dhore, Advocate for the petitioners.
Shri P. Deshpande, Advocate for the respondent.

CORAM : ROHIT B. DEO, J.
DATED : 25.02.2022

ORAL JUDGMENT :

Heard. **RULE.** With consent, the petition is heard finally.

2. The petitioners are the defendants in Summary Civil Suit 35 of

2021 who are aggrieved by the order dated 01.10.2021 rendered by the Civil Judge, Senior Division, Akola whereby the application preferred by the petitioners seeking leave to defend is rejected on the ground that the same is filed beyond limitation.

3. It is common ground that while the defendants 1 and 2 were served with the suit summons on 24.06.2021, the summons for judgment was served on 30.07.2021, and therefore, the application seeking leave to defend which was moved on 02.08.2021, was within the limitation. It appears that the learned Trial Court failed to appreciate that Order XXXVII Rule 3(5) of the Code of Civil Procedure refers to the 'service of summons for judgment' and not to suit summons.

4. The order impugned is not sustainable. The matter is remitted to the learned Trial Court to decide application Exhibit 19 seeking leave to defend, afresh, after hearing the parties.

5. Learned Trial Court is requested to dispose of application Exhibit 19, as expeditiously as possible and in any event within the next 30 days.

6. The petition is disposed of.

(ROHIT B. DEO, J.)