

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

WRIT PETITION NO. 4760 OF 2021

Jitendra Madhorao Khorgade vs. Shri. Prakash Domaji Gotmare and
others

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. H. S. Chawhan, Advocate for petitioner.
Mr. N. R. Tekade, Advocate for respondent No.1.

CORAM : MANISH PITALE J.

DATE : 10/06/2022

By this petition, the petitioner has challenged order dated 23/10/2021, passed by the Court of 15th Joint Civil Judge, Senior Division, Nagpur whereby an application at Exh.69 filed by the petitioner for setting aside an earlier order dated 15/09/2021 for no defence evidence has been rejected.

2. The suit in the present case was filed by the respondent No.1 in the year 2014, seeking declaration, specific performance of contract, possession and perpetual injunction.

3. It is an admitted position that the petitioner as the defendant failed to even cross-examine the witnesses of the respondent No.1(original plaintiff). Thereafter, ample opportunity was granted to the petitioner to lead defence evidence which was not done and an application for adjournment was filed before the Court below. On 15/09/2021, also an application for adjournment was placed on record, which did not even bear the signature of the counsel representing the petitioner. In such circumstances, the Court below passed its order dated 15/09/2021, recording that the defendants had failed to lead evidence and hence, their evidence was treated as closed. Thereafter, the aforesaid application at Exh.69 was filed on behalf of the petitioner on 01/10/2021. The same has been rejected by the impugned order.

4. This Court has considered the contentions raised on behalf of the petitioner. The contesting respondent No.1 has appeared through counsel and vehemently opposed the present petition.

5. This Court is of the opinion that if the order dated 15/09/2021 is allowed to operate, the petitioner as a defendant will certainly suffered set back as the suit will be finally heard in the absence of

any defence evidence. But, the record shows that the petitioner himself is to blame for this predicament. In fact as noted above, the witnesses of the plaintiff were also not examined at any stage by the petitioner or the other defendants.

6. This Court had issued notice on 26/11/2021, recording that there is every likelihood of the petitioner suffering serious prejudice, if the order dated 15/09/2021 passed by the Court below is allowed to operate.

7. Considering the prejudice that the petitioner would obviously suffer, if the impugned order is not interfered with, this Court is inclined to show indulgence but, at the same it can be done only after imposing appropriate costs on the petitioner. The respondent No.1 has been put to inconvenience and the proceedings before the Court in a suit filed in the year 2004 have been taken casually by the petitioner and other defendants. Such a situation warrants imposition of appropriate costs on a litigant like the petitioner in the present case seeking discretionary relief from this Court. In fact, this Court is of the opinion that the impugned order passed by the Court below cannot be said to be

erroneous, but, indulgence is being shown as a matter of last chance to the petitioner before this Court.

8. In view of the above, the impugned order is quashed and set aside, the application at Exh.69 is allowed and consequently the order dated 15/09/2021, passed by the Court below is set aside. It is directed that the petitioner will be permitted to lead evidence, but subject to payment of costs of Rs.50,000/- [Rupees Fifty Thousand only] to the respondent No.1 (original plaintiff). The amount of costs shall be deposited before the Court below by the petitioner within a period of four weeks from today. The respondent No.1 shall be entitled to withdraw the said amount deposited towards costs.

9. It is made clear that if the petitioner fails to deposit the said amount towards costs in the aforesaid stipulated period of time, the order passed today in the present writ petition shall stand recalled and the writ petition shall stand dismissed without reference to the Court.

10. Proceedings in the said suit shall be expedited.

JUDGE