

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

23 WRIT PETITION NO.1094 OF 2023

ANIL VITTHALRAO KOLHE
VERSUS
SUDHIR GANPATRAO RAUTWAD AND OTHERS

Mr. Vikas G. Kodale h/f. Mr.V.D. Gunale, Advocate for the Petitioner.

CORAM : SHARMILA U. DESHMUKH, J.
DATED : FEBRUARY 03, 2023.

PER COURT :

1. The petitioner is aggrieved by the order dated 26.12.2022 whereby the petitioner's application below Exh.25 and 27 in RCS No.257 of 2016 came to be rejected. As the issue in the present case pertains to the service of summons upon respondent no.3 who is the defendant no.3, in my opinion, it is not necessary to issue notice to the other respondents and the matter can be disposed of by hearing the counsel for the Petitioners.

2. Petitioner-plaintiff had filed an application below Exh.25 seeking to serve the defendant no.3 by paper publication under the provisions of Order V Rule 20(1)(a). The application below Exh.27 had sought to serve the defendant no.3 by way of affixing the summons on the outer door of the house of defendant no.3. RCS No.257 of 2016 has been instituted in the year 2006 and is still at the stage of service of summons, as in spite of various

efforts, the defendant no.3 could not be served.

3. Heard learned counsel appearing for the petitioner.

4. The Trial Court has rejected both the applications below Exh.25 and 27 by holding that the bailiff report does not show that he has tendered the summons to defendant no.3, which was refused by defendant no.3, and as such, there is no material before the trial Court that defendant no.3 is avoiding service of summons. In my opinion, the consideration which ought to weigh with the Trial Court is the service upon Defendant No 3 by permissible mode. The defendant nos.1 and 2 are the brothers of defendant no.3 and in spite of having knowledge about the institution of suit, the Defendant No 3 has not caused appearance. The efforts by the petitioners to serve the defendant no.3 have gone in vain. At this stage, for the purpose of effecting the service, it is necessary for one of the modes of service is adopted so that the suit can proceed further.

5. In my view, in interests of justice and considering that the suit is of the year 2006, the application below Exh.27 can be allowed and the service to be effected on the defendant no.3, by fixing the summons notice on the outdoor of the residence of the defendant no.3.

6. Writ Petition stands allowed in the above terms.

(SHARMILA U. DESHMUKH, J.)