

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 9044 OF 2022

Jagdish Digambar Chaudhari .. Petitioner

Versus

Vaishali Sudhir Patil and others .. Respondents

Shri Chandrakant K. Shinde, Advocate for the Petitioner.
Shri A. M. Gholap, Advocate for the Respondent No. 1.

**CORAM : SHARMILA U. DESHMUKH, J.
DATE : 10TH JANUARY, 2023.**

FINAL ORDER :

. The petitioner is aggrieved by the order dated 17th February, 2022 passed by the Trial Court below Exhibit 192 in R.C.S. No. 229 of 2012, whereby the application of the petitioner for issuance of witness summons to the Junior Telecom Officer, BSNL came to be rejected.

2. Heard the learned counsel for the parties.

3. Learned counsel for the petitioner submits that, suit has been filed by the respondent No. 1 for eviction and in order to prove the comparative hardship, the Junior Telecom Officer is sought to be examined. He has invited attention of this Court to the pleadings in the written statement that the respondent No. 1's husband was in service of BSNL and he has been allotted Government quarter, which has been denied by the Respondent No 1 in her evidence. He would further urge that the Trial Court

has erred in observing that there is no pleading to that effect in the written statement.

4. *Per contra*, learned counsel for the respondent supports the impugned order and submits that it is only to fill in lacuna in the evidence, the application for issuance of witness summons is made, which has been rightly rejected.

5. Present controversy is pertaining to the issuance of witness summons, which is governed by the provisions of Order XVI Rule 1 of the Code of Civil Procedure (for short "Code"). Order XVI Rule 1 of the Code provides that the parties shall present in Court a list of witnesses whom they propose to call either to give evidence or to produce documents and obtain summons to such person for their attendance in Court. Admittedly, in the present case, no such list has been filed by the petitioner and after trial has commenced, application has been filed for issuance of witness summons. In such contingency, when the petitioner seeks issuance of summons to witness not referred in the list of witness, sub Rule (3) of Rule 1 of Order XVI of the Code provides that the application should show sufficient cause for the omission to mention the name of such witness in the said list. Perusal of the application dated 17.02.2022 filed by the petitioner shows that no such explanation has been submitted by the petitioner. As such there is no compliance of Order XVI Rule 1(3) of the Code. Considering the non compliance with the provisions of Order XVI of the Code, I am not inclined to interfere with the impugned order.

6. Writ petition being devoid of merits is accordingly dismissed. There shall be no order as to costs.

[SHARMILA U. DESHMUKH, J.]

bsb/Jan. 23