

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

**WRIT PETITION NO.5392 OF 2023**

**SHAMPRASAD VISHWANATH DEV  
VERSUS  
MANJIRI SHARDUL DEV AND OTHERS**

Mr. Amol R. Joshi, Advocate for the petitioner  
Mr. L. V. Sangit, Advocate for respondent No.1  
Mr. A. M. Nagarkar, Advocate for respondent No.3.

**CORAM : R. M. JOSHI, J.  
(VACATION JUDGE)**

**DATE : 12<sup>th</sup> MAY, 2023**

**P. C. :-**

1. This petition filed under Article 227 of the Constitution of India takes exception to orders passed below Exhibits 559, 560 and 561 dated 06/05/2023 passed in Civil Miscellaneous Application No. 03/2020.

2. Petitioner is respondent No.3 in original proceeding, who had filed Writ Petition bearing No. 4852/2023. In the said petition an order was passed by this Court on 25/04/2023 relying upon statement made on instructions by learned Senior Advocate appearing for petitioner about restricting his prayer to

examine witness Nos. 1, 2, 7, 9, 10, 11, 12, 15 and 17. He further made statement that all the witnesses except witness No. 17 are from Kopergaon whereas the trial is going on and witness No. 17 is from Nashik will be made available for recording his evidence. It is on the basis of the statement made on behalf of the petitioner that the petitioner will examine all these witnesses within a period of one week, order came to be passed directing the hearing of Civil M.A. 3/2020 on day to day basis and that petitioner shall examine these witnesses within a period of one week from the date of receipt of writ of this order.

3. The background in which the said order came to be passed is elaborately recorded and that this Court does not wish to enter upon any other controversy except testing validity of orders impugned.

4. Record indicates that an application Exhibit 511 was filed on 27/04/2023 seeking issuance of summons. The said application was allowed and summons were issued to Dr. D.S. Mulay, Sachin Kajale, Principal Somaiyya Vidyavihar's Shri

Sharda English Medium School, Kopargaon. Summons of Dr. Muley was made returnable on 04/05/2023 whereas summons issued to Principal of the School and Sachin Kajale were made returnable on 06/05/2023.

5. Learned District Judge-2 passed order dated 03/05/2023 whereby the evidence of Mayuri and Bharati was not allowed as they were not permitted to be examined by this Court in its order dated 03/05/2023. It was further observed by the learned DJ-2 that 03/05/2023 was last date of the time frame within which respondent No.3 therein was expected to adduce evidence and hence the evidence of respondent No.3 was closed. As far as refusal of evidence of these two witnesses, no fault can be found with said order as this Court did not permit examination of those witnesses.

6. Perusal of order dated 25/04/2023 clearly shows that only by way of indulgence and on the basis of the statement made by the Senior Advocate appearing on behalf of the petitioner, one week's time was granted for examining 9

witnesses. The learned DJ-2 therefore could not be said to have been at fault if the order of this Court is interpreted strictly and thereby the evidence of respondents was closed on 03/05/2023.

7. However, difficulty arises to sustain the said order of closing evidence of petitioner on 03/05/2023 in view of certain facts appearing from record. On 27/04/2023 summons were sought to be issued. Learned Judge issued summons to the witnesses as prayed. Once the summons were issued there was a reason for the petitioner to believe that on the dates made returnable the witnesses would be allowed to be examined. But thereafter, on 03/05/2023 an order came to be passed whereby the evidence of petitioner was closed. The effect of issuance of witness summons was not taken into consideration, while closing evidence. By allowing application for examination of 3 witnesses on 04/05/2023 and 06/05/2023, learned Judge practically had permitted for their examination on respective dates. If the witness summons would have been refused for 04/05/2023 and 06/05/2023, the petitioner could have taken steps to examine them before 03/05/2023. With passing of

order of closing of evidence on 03/05/2023, opportunity granted to the petitioner by order of this Court is lost.

8. In considered view of this Court, this has resulted in miscarriage of justice. It would be therefore just and necessary to permit the petitioner to examine Dr. D.S. Mulay, Sachin Kajale and Principal Somaiyya Vidyavihar's Shri Sharda English Medium School, Kopargaon.

9. Hence, only with a view to ensure that the cause of justice is advanced, by way of indulgence and as last opportunity, petitioner is permitted to examine these three witnesses in time schedule given herein after. Consequently time limit fixed for the decision of the Civil M.A. 03/2020 needs to be extended. It is made clear that in no circumstance the said time schedule be allowed to be altered irrespective of non availability of those witnesses, counsels of parties or for any other reason.

10. Hence following order:-

. Petition is disposed of in following terms.

(i) The petitioner is permitted to lead evidence of Dr. D.S. Mulay, Sachin Kajale, Principal Somaiyya Vidyavihar's Shri Sharda English Medium School, Kopargaon.

(ii) Examination and cross-examination of these three witnesses be completed within a period from 15/05/2023 to 17/05/2023.

(iii) Petitioner shall not be permitted to examine any other witness.

(iv) Learned DJ-2 to hear the arguments of both sides on completion of evidence and in any case on 18/05/2023 and pass judgment on or before 19/05/2023.

(v) It is open for the learned DJ-2 to pass appropriate order if the witnesses or the advocates for parties are not present or do not cooperate for completion of evidence within aforesaid time or for making submissions.

(vi) Registrar (Judicial) to communicate this order the learned DJ-2 as well as the counsel for petitioner and respondent No.1, for its compliance.

**(R. M. JOSHI, J.)  
VACATION JUDGE**

ssp