

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1853 OF 2023

Shubhangi Suresh Hole & Others.

...Petitioners.

Versus

Ashok Damodhar Hole and Others.

..Respondents.

Mr. Ashish Raghuwanshi i/b Shailesh Kharat for the petitioner.
Ms. Gargi Warujikar i/b R. S. Gagawane for the respondents.

Coram : Sharmila U. Deshmukh, J.

Date : August 9, 2023.

P. C. :

1. Heard.

2. The challenge in the petition is to the order dated 9th December 2022 rejecting the petitioner's application for issuance of witness summons as per the application dated 20th August 2022. Learned counsel appearing for the petitioner points out that the issues were framed on 2nd January 2017 and the application seeking issuance of summons to the witnesses came to be filed on 20th August 2022, ie., before the evidence of defendants had commenced, however, the same was taken on record on 22nd November 2022. He would further submit that the petitioners are seeking to examine the

persons who are witness to the documents which are basic documents on the basis of which the alleged transactions had taken place. He would further contend that the other witness is a public notary before whom the Will-deed was executed. As such, he would contend that these witnesses are necessary for proving the documents on the basis of which the defence is based. He draws support from the decisions of this Court in the case of ***Babu Shafazali Khan v. Rajendra Narayan Suryawanshi [Writ Petition No. 6677 of 2021 decided on 13th October 2021]*** and submits that the only ground on which the application has been rejected is that the applicant does not state the purpose for which the witnesses are proposed to be summoned.

3. *Per contra*, learned counsel appearing for the respondents submits that the provisions of Order 16 Rule 1 has not been complied with and as such the application filed on 20th August 2022, after the evidence of plaintiff is over, has been rightly rejected by the trial Court.

4. Considered the submissions.

5. There is no dispute that the witnesses proposed to be examined by the defendants are for the purpose of proving the documents on the basis of which the defence of defendants is based.

Perusal of the impugned order shows that the application has been rejected on the ground that the same has been filed in casual manner without mentioning the purpose for which the witnesses are proposed to be summoned and it that is only in the written arguments the defendants had tried to patch up the lacuna in the application by describing the need and purpose of the witnesses. In my view, the trial Court has adopted a hyper technical view of the matter. It is not in dispute that neither the plaintiff nor the defendants had filed the list of witnesses as contemplated under Order 16 Rule 1 of the CPC. The application for summoning the witnesses has been filed on 20th August 2022, even if it is held that the application does not contain the necessary details as far as the relevancy of the witnesses to be examined is concerned, the written notes of arguments, which are at page no. 223 of petition, amply demonstrate the same. The trial Court could have taken into consideration the written arguments and decided the application.

6. The decision in the case of ***Babu Shafazali Khan (supra)*** is squarely applicable to the facts of the present case. In that case, this Court after taking into consideration the provisions of Order 16 Rule 1 of CPC has held that the rejection merely on the technicality cannot be permitted. In that view of the matter, the impugned order dated

9th December 2022 is hereby quashed and set aside. As a consequence, the application dated 20th August 2022 stands allowed. It is required to be noted that in the interest of justice and to ensure the proper adjudication of issues on merits, the examination of the witnesses ought to have been permitted.

7. Writ petition stands disposed of in above terms.

[Sharmila U. Deshmukh, J.]