

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 7519 OF 2022

Purushottam S/o. Gopal Yadav,
aged about 60 years, Occupation :
Private, R/o. 211, Brijbhumi Complex,
1st Floor, Telephone Exchange Square,
Nagpur.

.... **PETITIONER.**

// VERSUS //

1. Mrs. Meena Wd/o. Ramesh Vaswani,
aged about 48 years, Occ : Household,
2. Bharat S/o. Ramesh Vaswani,
aged about 21 years, Occ. : Student,
3. Divya D/o. Ramesh Vaswani,
aged about Major, Occ. : Student,

Respondent no.1 to 3 R/o. Plot No.
21, Gopi Villa, Raj Nagar, Nagpur.

3. Prabhakar S/o. Gopal Yadav,
aged about ____ years, Occupation:
Private, R/o. C/o. Deepak Laxman
Ghate, Juni Basti, Manewada,
Nagpur.

.... **RESPONDENTS.**

Shri Sanket R. Charpe, Advocate for Petitioner.
Shri D.N.Dani, Advocate for Respondent Nos. 1 to 3.

CORAM : ANIL S. KILOR, J.
DATED : JULY 25, 2023

ORAL JUDGMENT :

1. Heard.
2. **RULE.** Rule made returnable forthwith. Heard finally by consent of the learned counsel for the parties.
3. The order below Exh.95, dated 06/10/2022 rejecting the application moved by the petitioner for setting aside no evidence order dated 05/12/2013 and 29/10/2021 and for grant of permission to adduce evidence, is under challenge in this writ petition.
4. It is the case of the petitioner that being a layman he was unaware of the procedure of law and he was dependent upon the advise of his counsel, who told him that whenever his presence would be required he will contact him. Then there was Covid-19 pandemic and therefore, the petitioner could not contact the Advocate to know about the progress of the matter. However, in the meanwhile, the earlier counsel had expired and therefore, the petitioner visited his office and thereafter he consulted a new counsel and thereafter he got knowledge about the fact that the earlier counsel did not take steps in order to cross-

examination the plaintiff and his counsel has not filed appropriate application. Therefore, he filed application Exh.95 to set aside the no evidence order and order passed below Exh.1 dated 29/10/2021.

5. The said application was strongly opposed by the respondent and considering the same the application Exh.95 was rejected.

6. In the present matter, the suit is for specific performance and considering the fact that the petitioner got the knowledge about no evidence order when he engaged another lawyer after the earlier lawyer has expired. I am of the opinion that the petitioner shall get one opportunity to defend his case. As far as delay in moving application, sufficient explanation has been offered and therefore, I am of the opinion that the learned trial Court ought to have granted such opportunity to the petitioner.

7. In the circumstances, though the learned counsel for the respondent is opposing the present writ petition, I am of the opinion that it needs to be allowed. Accordingly, I pass the following order:

- i) The writ petition is allowed.
- ii) The impugned order dated 06/10/2022 passed below Exh.95 by 7th Joint Civil Judge Senior Division in Special Civil Suit No.586 of 2008 is hereby quashed and set aside and thereby application Exh.95 is allowed.
- iii) The learned counsel for the petitioner undertakes to take necessary steps for recalling the witnesses and further cross-examination etc. without further delay. The defendant No.1 is at liberty to lead further evidence, if she so desires.

Rule is made absolute accordingly. No order as to costs.

(ANIL S. KILOR, J)

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