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

950 WRIT PETITION NO. 4109 OF 2017

SHIVAJI GANPATI ZATE AND ANOTHER

....Petitioners

VERSUS

SUBHADRABAI BHAGWAT ZATE AND OTHERS

.....Respondents

Mr. S. P. Urgunde, Advocate for the petitioners

Mr. A. V. Patil Indrale, Advocate for respondent Nos. 1 to 5

CORAM : ARUN R. PEDNEKER, J.

DATE : 27th FEBRUARY, 2024

P. C.

1. Heard learned counsel for the parties.

2. Learned counsel for petitioners have challenged the order passed by the CJSD, Nilanga dated 18-03-2017 in RCS No. 89/2013 whereby opportunity to lead evidence is denied. Defendant side for evidence is closed by order dated 10-03-2017. Exh.106 is filed by the defendant to set aside the order of closure of evidence of defendants. Learned counsel for defendant/petitioner submits that defendant needs to examine

two witnesses and that in the event defendants' evidence is not taken on record he would lose an opportunity to defend the suit. Defendant is the owner and in possession of the suit property by virtue of the registered sale deed and he wants to examine witness of the sale deed. The trial court rejected application on account of fact that defendant has not filed list of the defendants witness and ample opportunities were granted to examine the same and that defendants has also not filed affidavit of examination in chief of any witnesses. However, learned counsel appearing for petitioner submits he only needs to examine two witnesses to establish the sale deed that go to the root of the matter.

3. In view of the same, in the interest of justice defendant is granted one opportunity to give evidence as such order dated 18-03-2017 is set aside subject to cost of Rs.5000/- to be paid to plaintiff before the trial court within six weeks. Since the matter is held up for long period of time on account of pendency of the present proceeding the trial court is directed to

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decide RCS No.89/2013 within a period of two years on production of order of this court. The petition is disposed off.

[ARUN R. PEDNEKER, J.]

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