



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

920 WRIT PETITION NO. 10467 OF 2024

SHOBHA DATTA INGALE

VERSUS

**THE MUNICIPAL CORPORATION
THROUGH ITS COMMISSIONER & ANOTHER**

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Advocate for the petitioner : Mr.R.P.Dhase

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CORAM : ARUN R. PEDNEKER, J.

DATE : 08.10.2024

P.C. :

1] By the present petition, the petitioner challenges the order dated 16.07.2024 passed by the 8th Joint Civil Judge Junior Division, Latur in Regular Civil Suit No.50 of 2019 below Exh. 74 whereby the Civil Court rejected the application filed by the petitioner u/s. XVI Rule 1 (3) r/w. Rule 21 of the Code of Civil Procedure.

2] It is the case of the petitioner–plaintiff that the respondent no.2–defendant no.2 has not filed written statement and has not entered into witness box. Despite sufficient opportunity the defendant no.2 failed to lead evidence. As such, the petitioner–plaintiff has filed an application below Exh. 74 u/s.XVI Rule 1 (3) r/w. Rule 21 of the CPC praying for issuing witness summons to

defendant no.2 as plaintiff's witness. The trial Court, by impugned order dated 16.07.2024, dismissed the said application.

3] This Court, by order dated 30th September, 2024, asked the petitioner to produce relevant judgments to support the contentions that in terms of Order 16 Rule 1 of the CPC, it is possible for one of the parties to the suit to apply for issuance of summons to the other party as it's witness. In that regard, the learned counsel for the petitioner has relied upon the judgment in the case of **Ramdas Dhondibhu Pokharkar Vs. State Bank of India & Anr.** reported in **2003 (1) ALL MR 76** to contend that it is permissible for one of the parties to the suit for apply for issuance of the summons to the opposite party to be examined. However, perusal of the judgment in the case of **Ramdas [supra]**, this Court at para no.10 held that "viewed from this angle, the issuance of summons to the employee of the plaintiff-Bank would not amount to issuing of summons to the opposite party itself nor it will be in any manner inconsistent with the practice prevailing in the Courts in India". This Court has further held that normally a party to the suit is expected to step into the witness box in support of his own case and if a party does not appear in the witness box it would be open to the trial Court to draw an inference against him. If a party fails to appear in the witness box, it should normally not be open to his opponent

to compel his presence by the issue of a witness summons. In the case of **Ramdas [supra]**, summons were issued to the employee of the plaintiff-bank as it had come to the conclusion that the issuance of summons to the employee of the plaintiff-Bank would not amount to issuing of summons to the opposite party itself and in view of the same, the trial Court was directed to issue summons to the employee of the Bank. The said judgment does not support the case of the petitioner. In view of the same, I do not see any reason to interfere with the impugned order. The present Writ Petition is accordingly dismissed.

[ARUN R. PEDNEKER]
JUDGE

DDC