



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 116 OF 2024

(Sarala Tushar Tawri
Vs.
Rupchand Chimanlal Jain)

Office Notes, Office Memoranda of Coram, Appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. V.B. Bhise, Advocate for the Petitioner.
Mr. A.J. Thakkar, Advocate for the Respondent.

CORAM: N.R. BORKAR, J.

DATED : 12th JUNE, 2024

Heard.

2. This Petition takes exception to the order dated 27.09.2023 passed by the learned Civil Judge Senior Division, Akot, below Exh.19 in Sum. Civil Suit No. 2/2021.

3. The Petitioner herein/original Plaintiff has filed the Suit under Order XXXVII of the Code of Civil Procedure against the Respondent herein/original Defendant for recovery of amount of Rs.16,00,000/-.

4. By the order impugned, the learned Trial Court has allowed the application filed by the Respondent/Defendant seeking leave to defend the said suit.

5. I have perused the impugned order. The learned Trial Court has observed that though the suit was instituted

under Order XXXVII of the Code of Civil Procedure, his predecessor treated it as an ordinary suit and accordingly the suit summons were issued. It is further observed that, his predecessor has even allowed the Respondent/Defendant to file the written statement. The Trial Court has observed that on this sole ground the application deserves to be allowed.

6. In my view, the Trial Court ought not to have allowed the application on the basis of some procedural errors and ought to have decided the application in accordance with law. The order impugned, therefore, cannot be allowed to stand. In the result, the following order is passed.

ORDER

(i) The Petition is **partly allowed**.

(ii) The impugned order is hereby quashed and set aside and the learned Trial Court shall decide the application at Exh. 19 afresh in accordance with law.

7. Pending application/s, if any, shall stand disposed of accordingly.

(N.R. BORKAR, J.)