



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

WRIT PETITION NO. 1786 OF 2024

**Dattu Namdeo Shelar Through Gpa Shantabai Dattu Shelar
VERSUS
The District Collector And Others**

Mr. D. P. Palodkar, Advocate for Petitioner
Mr. N. D. Raje, AGP for Respondent Nos. 1 and 2
Mr. A. S. More, Advocate for Respondent Nos 3A to 3F

CORAM : R. M. JOSHI, J.

DATE : 25th March, 2025

PER COURT :-

1. This petition takes exception to the order dated 19.12.2023 passed below Exhibit 67 in Regular Civil Suit No. 227/2018 whereby application filed by the plaintiff for issuance of witness summons to Circle Officer came to be rejected.

2. Learned counsel for the petitioner/original plaintiff submits that against the order passed by Mamlatdar under Section 5(2) of the Mamlatdar Courts Act and also for seeking perpetual injunction, suit came to be filed. It is one of his contentions that the issue involved in this suit is as to whether plaintiff is entitled for injunction as said against defendants and hence examination of Circle Officer is essential for proper decision of the case.

According to him, the Trial Court has rejected the application with observation that the plaintiff has not pleaded about the execution of the order passed by Tahsildar in Vahivat Case No. 31/2017. This, according to him, has led to the miscarriage of justice as plaintiff has been prevented to substantiate his case for seeking injunction.

3. Learned counsel for the respondents/original defendants supported the impugned order.

4. Trial Court has framed issue vide Exhibit 43. Issue No. 3 indicates about entitlement of the plaintiff to get injunction against defendants. Defendants on the other hand in their written statement has come out with specific case about the execution of the order passed by Tahsildar and by Circle Officer. Thus, for the purpose of injunction, execution of the order passed by Tahsildar also becomes relevant issue. In such circumstances, there can never be pleading in the plaint as it is not the case of the plaintiff that the said order is executed. However, in the written statement, defendants have pleaded so it is open for the plaintiff to lead evidence contrary to disprove the contention of the defendants.

5. There is no observation made by the Trial Court about irrelevancy

of the witness. The perusal of the application indicates that in order to prove that the plaintiff is entitled in injunction for want of execution of the order passed by Tahsildar, the issuance of witness summons seeks presence of the witness along with the documents mentioned in the application is relevant. Hence, order impugned cannot sustain.

6. As a result of the above discussion, petition stands allowed. Impugned order is set aside. Application Exhibit 67 stands allowed. Trial Court to issue witness summons as prayed.

(R. M. JOSHI, J.)

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