



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

WRIT PETITION NO. 4068 OF 2024

Sharad Sampat Gunjal
VERSUS
Arti Anil Shelke And Others

Mr. P. S. Mantri i/b Mr. P. V. Barde, Advocate for Petitioner
Mr. K. N. Shermale, Advocate for Respondent Nos. 1 to 3

CORAM : R. M. JOSHI, J.

DATE : 16th April, 2025

PER COURT :-

1. This petition takes exception to the order dated 28.02.2024 passed by the Trial Court in Regular Civil Suit No. 382/2021 whereby application filed by the petitioner/original defendant for issuance of witness summons came to be rejected.

2. Facts as they appears from the record indicate that respondents/original plaintiffs filed R.C.S No. 382/2021 for seeking money decree against defendant. Defendant filed written statement. Evidence of both sides was over. Arguments of respondents/plaintiffs were done before the Trial Court and at this stage, Application Exhibit 56 came to be filed on behalf of defendant or issuance of the witness summons.

3. Perusal of the said application indicates that it is specifically contended by the defendant that though evidence of defendant was closed by filing pursis, however, at the time of preparing the final argument, it was realized that the evidence of Education Officer is necessary. Hence, application came to be preferred before the Trial Court. This application was opposed by plaintiffs. Learned Trial Court rejected the application essentially on the ground that the petitioner/defendant has closed the evidence by filing pursis Exhibit 54 and sufficient opportunity was given to the petitioner for leading evidence.

4. Learned counsel for petitioner submits that in the written statement specifically in paragraph 7 there is reference with regard to the payment of Provident Fund loan by husband of Plaintiff No. 1. It is his submission that the Application Exhibit 56 clearly indicates that while preparing for the arguments, the evidence of Education Officer was revealed. It is his submission that no prejudice will cause to the plaintiffs if evidence is allowed to be led.

5. Learned counsel for respondents-plaintiffs submits that petitioner was granted sufficient opportunity by the Trial Court to lead evidence and petitioner has also examined two witnesses from credit society and hence, there

is no reason or justification for permitting him to file any application to examine further witnesses. It is his submission that after closing of the evidence, arguments of plaintiffs are already done before the Trial Court and hence at this stage no witness can be permitted to be examined by the defendant. He took aid of the judgment of Hon'ble Supreme Court in case of **Vadiraj Naggapa Vernekar (d) through LRs vs. Sharad Chand Prabhakar Gogate (2009) AIR (SCW) 2518** to contend that once an opportunity to the party of leading evidence has been given, the same cannot be permitted at a later stage of the proceeding.

6. Perusal of the record indicates that there is specific pleading with regard to the Provident Fund Loan obtained by the husband of Plaintiff No. 1. Application Exhibit 56 indicates that at the time of preparing for the final arguments, it was realized by the defendants that examination of Education Officer is necessary. It is pertinent to note that the learned Trial Court has not rejected the application by holding that the witness sought to be examined is not relevant for the decision of the case. The rejection is solely on the ground that the petitioner-original defendant have filed pursis of closing evidence and sufficient opportunity was given to the defendant to lead evidence. In the facts of the case, it is held that the witness is necessary/relevant for deciding the

issue involved in the proceedings, examination of such witness deserves to be permitted. No prejudice much less any irreparable loss would be caused to the plaintiffs as the witness could be cross examined by them.

7. The suit is filed in the year 2021. As observed by the Trial Court, evidence of the plaintiffs was concluded on 28.04.2023 and thereafter evidence of defendant was closed on 24.01.2024. Thus it cannot be said that defendant has deliberately delayed disposal of the suit before the Trial Court.

8. In any case, since the evidence sought to be led by defendant is relevant for the decision of the case, it is a fit case to allow Application Exhibit 56. Accordingly, petition stands allowed. Impugned order set aside. Application Exhibit 56 is allowed.

9. In view of the fact that opportunity is given to the defendant, and to ensure that same is not abused to cause delay in the proceedings, and as only one witness is to be examined, the said exercise be completed within a period of 2 months from today. Trial Court is further directed to dispose of the suit within a period of 3 months.

(R. M. JOSHI, J.)

bsj