



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

WRIT PETITION NO. 10304 OF 2023

**SHAIKH KHAJA MOINODDIN S/O FAKIR MOHAMMAD
VERSUS
SHAIKH MAHEBOOB S/O SHAIKH FARID AND ANOTHER**

...
Mr. Gangakhedkar Shailendra S, Advocate for the Petitioner
Mr. Farid Moinpasah Shaikh, Advocate for respondent No.1

....

CORAM : S. G. CHAPALGAONKAR, J.

DATE : 24.07.2025

PER COURT :-

1. The petitioner approaches this Court with following prayer:

“To quash and set aside impugned order below Exh.-1 dated 04.04.2023 and below Exh.-9 and 17 dated 05.06.2023 in Special Civil Suit No.04 of 2022 by learned Joint Civil Judge Senior Division, Nanded and consequently application below Exh.-9 and 17 may kindly be allowed.”

2. Learned Advocate appearing for petitioner submits that respondent No.1 instituted Special Civil Suit No.04 of 2022 against petitioner and respondent No.2 seeking relief of specific performance of contract. The suit summons was issued on 12.01.2022, which was never served upon petitioner. On 16.09.2022, respondent No.1 moved application seeking permission to serve summons through R.P.A.D., and same was allowed. In pursuance of aforesaid order, summons is alleged to have been served. However, postal endorsement on envelope shows ‘refused to accept’.

3. Mr. Gangakhedkar, points out that address mentioned in plaint and address on R.P.A.D envelope is different. Therefore, such endorsement could not have been approved by Trial Court.

4. He would submit that petitioner appeared before Trial Court and filed applications below Exh.-9 and 17 for setting aside *ex-parte* order and for supply of documents, respectively. However, both applications are rejected.

5. Perusal of impugned orders shows that suit is at preliminary stage. Evidence of parties is not yet started. Petitioner has shown sufficient cause for his non-appearance. The service of summons by way of Registered Post cannot be approved for the aforementioned discrepancy.

6. In that view of the matter, Trial Court could not have adopted hyper technical view and ought to have granted opportunity to petitioner to defend suit.

7. Accordingly, writ petition is **allowed** in terms of prayer clause 'B' subject to condition that petitioner deposits costs of Rs.10,000/- (Rs. Ten Thousand only) before Trial Court within a period of four (04) weeks from today. Upon deposit of costs, it be released to plaintiff.

[S. G. CHAPALGAONKAR, J.]