



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 14020 OF 2024

Saida Begum Yusuf And Another
VERSUS
Sayyad Mehar Ali Syd Baba Ali And Others

- Mr. M. G. M. Shaikh, Advocate for the Petitioners
- Mr. M. R. Sonawane, Advocate for the Respondent Nos. 1 to 4

CORAM : R. M. JOSHI, J
DATE : MARCH 04, 2025

PER COURT :

1. This Petition takes exception to the order passed below Exh. 215 in RCS No. 126/2009 whereby the Trial Court has refused to issue witness summons as sought by the Defendants/Petitioners. The Trial Court has recorded the reasons that suit is expedited and also that the documents in question are already exhibited.

2. Learned Counsel for the Petitioners submits that the Trial Court has committed error in rejecting application without recording finding that no case is made out for issuance of witness summons. It is his submission that Trial Court has not held that documents

which are sought to be produced by issuing witness summons are not relevant for decision of the case.

3. Learned Counsel for Respondents opposed the Petition by submitting that subsequently application came to be filed vide Exh. 229 for the same purpose which has been allowed since the Respondents/Original Plaintiffs recorded no objection for the same. Thus, it is his contention that the Petition has become infrutuous.

4. Perusal of the applications Exhs. 215 and 229 *prima facie* shows that both applications are filed for seeking direction to produce different documents. This Court, therefore, finds no reason to dismiss the Petition on the ground that the Trial Court has already allowed application Exh. 229.

5. The impugned order shows that the rejection of the application filed by the Defendants/Petitioners is essentially for the reason that there is direction of expeditious disposal of the suit pending before the Trial Court. Apart from this, it is necessary to take

note of the fact that the Trial Court has refused to consider the binding authorities on it simply brushing the same away with observations that the facts in both case are different. It is not open for the Court below to discard the binding precedent in this manner.

6. Suffice it to say that there is no finding recorded by the Trial Court with regard to the relevancy of the document. As such, this Court finds no reason to discard the contention of the learned Counsel for the Petitioners that the documents are relevant and same is required to be called from the witness who is having custody thereof.

7. Hence, the Petition stands allowed. Application Exh. 215 is allowed. Trial Court to issue witness summons as prayed for.

8. This Court however deprecates the act of the Petitioners for filing one application after another in spite of the fact that these documents were well within the knowledge of the Petitioners/Defendants. In case the Trial Court finds that Defendants are deliberately

delaying the Trial, appropriate order shall be passed including imposing exemplary cost against the Defendants.

(R. M. JOSHI, J.)