

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1279 OF 2025

Pritam Ramesh Kadam and Others ...Petitioners

vs.

Laxmibai Ramchandra Kadam and Others ...Respondents

Mr. Kishor Patil i/b. Mr. Pratik Rahade, for the Petitioners.

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CORAM : N. J. JAMADAR, J.

DATE : JANUARY 27, 2025

P.C:

1. Heard the learned counsel for the petitioners.
2. The challenge in this petition is to an order dated 8th January, 2025 passed by the learned Civil Judge, Vita on an Application (Exh. 135) to set aside the order dated 5th July, 2019 of issue of witness summons to Advocate Umesh Kolekar.
3. In a suit for specific performance, the plaintiffs filed an application to issue witness summons to Advocate Umesh Kolekar as the said advocate had issued a public notice on 31st May, 2015 at the instance of the plaintiff and defendant No. 2. The said Application was allowed by an order dated 5th July, 2019.
4. It seems, the said witness filed an affidavit in lieu of examination in chief on 19th September, 2024. Thereupon, the

defendants filed an application to recall and set aside the order of issue of witness summons to Advocate Umesh Kolekar. Evidently, the said order was not at all called in question till the said witness filed an affidavit in lieu of examination in chief.

5. The submission on behalf of the petitioners that since the said advocate represented the defendants in another suit, he could not have been summoned as a witness for the plaintiff, in the peculiar facts of the case, does not merit countenance as in the application itself it was specifically mentioned that the said notice was issued by Advocate Umesh Kolekar on behalf of the plaintiff and defendant No. 2.

6. At any rate, the application for setting aside the order dated 5th July, 2019 seems to have been filed only after the affidavit in lieu of examination in chief came to be filed by the said witness. Therefore, there is no justifiable reason to interfere with the order passed by the learned Civil Judge.

7. Mr. Patil, the learned counsel for the petitioner, submitted that the affidavit in lieu of examination in chief travels beyond the brief allegedly jointly entrusted by the plaintiff and defendant No. 2.

8. If that is the objection, the defendants would be entitled to raise the objection to the relevancy and weight of evidence sought to be adduced by Advocate Umesh Kolekar. In the event such objection is raised, the learned Civil Judge shall decide the same at the time of final adjudication.

Petition disposed.

(N. J. JAMADAR, J.)