

Arun Sankpal

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1985 OF 2023**

Balwant Bapu Shinde

..Petitioner

Versus

Madhukar Dnyanu Patil & Ors

...Respondents

Mr. Abhijit Adgule, for the Petitioner.

CORAM: N. J. JAMADAR, J.

DATED : 14 JANUARY 2025

P.C.:

- 1.** Heard learned Counsel for the petitioner.
- 2.** The petitioner calls in question the legality, propriety and correctness of an order passed by learned Civil Judge, Senior Division, Kolhapur, on an application (Exhibit “93”) dated 10th October 2022, preferred by the Petitioner-Plaintiff to issue witness summons to the officers of the District Central Cooperative Bank Limited, Khupire Branch, in order to prove the copies of the statement of account, placed on record by the plaintiff, whereby the said application came to be rejected.

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3. By an order dated 18th June 2023 notices were issued to the respondents. The notices were duly served on respondent nos. 1 to 4, 5A to 5G and 6. Affidavits of Service in respect of respondent nos. 5G and 5F have been filed. None appears for the respondents.

4. The petitioner has instituted a suit for specific performance of the contract dated 22nd May 2014 to sell the suit property. It is the case of the plaintiff that, to pay the consideration, the plaintiff had withdrawn amounts from the bank and paid the same to the defendant. To substantiate the claim, the plaintiff produced the statements of the account maintained by him with the bank along with the list of documents (Exhibit “91”). After evidence of the plaintiff was closed, the plaintiff filed an application to summon the officers of the bank to establish the said fact.

5. By the impugned order, the learned Civil Judge was persuaded to reject the application opining that the plaintiff had ample opportunity to examine the officers of the bank to prove those bank statements at an earlier stage. No reason was ascribed by the plaintiff for not examining the witnesses at the appropriate stage.

6. On perusal of the material on record, it appears that it was the consistent stand of the plaintiff that he had withdrawn the amounts from bank account and paid the same to the defendant towards the consideration. The plaintiff had sought permission to file the documents

evidencing the said withdrawal of the amount and credit of the amount to the account of the defendant. The trial court noted that those documents were placed on record along with list at Exhibit “91”. Thus it is not the case that the plaintiff after closure of the evidence, with a view to fill in lacuna tried to file the documents and adduce evidence. Undoubtedly, there is some indolence on the part of the plaintiff in not seeking the examination of the witnesses at an appropriate time. However, the court is denuded of the inherent power to permit the parties to examine a witness at any stage of the proceedings.

7. A useful reference in this context can be made to a three Judge Bench judgment of the Supreme Court in the case of **Salem Advocate Bar Association Vs Union of India**¹ wherein it was enunciated that the deletion of Order XVIII Rule 2(4) does not take away the inherent power of the Court to call for any witness at any stage either suo motu or on the prayer of a party invoking the inherent powers of the Court.

8. In the facts of the case at hand, since the foundation was laid by the plaintiff to adduce evidence, and the said case was put to the defendants also, no prejudice would be caused to the defendant in the event the officer from the bank is examined. I am, therefore, inclined to allow the Petition.

9. Hence the following order.

(i) Petition stands allowed.

¹ (2005) 6 SCC 344.

- (ii) Impugned order dated 10th October 2022, stands quashed and set aside.
- (iii) The application (Exhibit “93”) stands allowed.
- (iv) The trial court shall issue summons to the witnesses in terms of prayer clause (b) of the application.
- (v) Petition disposed.

[N. J. JAMADAR, J.]