



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Writ Petition No. 805 of 2025

[Shri Parag Vasant Amle ..vs.. Shri Adityasingh s/o Jaipalsingh Chhatre]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. C. G. Barapatre, Advocate for the petitioner
Mr. A. P. Chorghade, Advocate for the respondent

CORAM : ANIL L. PANSARE J.

DATED : 06-03-2025

Heard.

2. On 13-2-2025, following order was passed.

"1. The contention is that while rejecting the application filed by the petitioner – original defendant for setting aside the order of No Defence Evidence, the Court below has placed reliance upon the facts of some other case.

2. The counsel for petitioner submits that on 03/02/2025, the order of No Defence Evidence came to be passed. He submits that in the morning session, he had informed the Trial Court that the witness had gone to Chandrapur and will appear before the Court in the second half. Accordingly, petitioner and his counsel appeared at 3.15 p.m. However, prior thereto, order of No Defence Evidence was passed. On the same day i.e. on 03/02/2025, the petitioner submitted application stating therein the aforesaid fact and requested to set aside the order and permit the petitioner to adduce evidence. He further submits that affidavit of evidence was submitted on 18/10/2024.

3. Despite such fact, the Court, noted in the impugned order that the petitioner has averred in the application that his affidavit of evidence is ready but because of typographical mistake and other compelling circumstances, it was not filed. Such was never the case of the petitioner.

4. *Issue notice to the respondent, returnable on 06/03/2025.*

5. *In the meantime, the proceedings of RCS No.193/2016 pending before the 2nd Additional Small Causes Court, Nagpur shall stand stayed.”*

3. Learned counsel for the respondent submits that there occurred some typographical error in the impugned order. Thus, it appears that the findings of the trial Court that the petitioner has averred in the application that his affidavit of evidence is ready, but because of typographical mistakes and other compelling circumstances, it is not filed is apparently incorrect. Consequently, the order passed by the trial Court rejecting the request made by the petitioner-original defendant to set aside order of no evidence is apparently perverse. The said order is liable to be quashed and set aside. Hence, following order.

ORDER

(i) Order dated 4-2-2025 passed below Exhibit 46 in RCS No. 193/2016 by 2nd Additional Judge, Small Causes Court, Nagpur is quashed and set aside. The application, Exhibit 46 is allowed.

(ii) The petitioner has already filed affidavit of evidence. The exercise of chief-examination and cross-examination may be carried out on the scheduled date or immediately thereafter.

(iii) Writ petition is disposed of in above terms.

(Anil L. Pansare, J.)