

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

901 WRIT PETITION NO. 813 OF 2024

VASANTRAO BHAUSAHEB DESHMUKH

VERSUS

**HAIDERIBEGUM GULAM MOHAMMED KHAN ALIAS HAIDERIBEGUM YUSUF
OSMANI AND ANOTHER**

...

Mr. S. S. Bora, Advocate for the Petitioner

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CORAM : AJIT B. KADETHANKAR, J.

DATE : 11.03.2026

PER COURT :-

. Heard Mr. S. S. Bora, learned counsel for the petitioner. None appears for the respondents despite service.

2. This matter was heard on 07.03.2026 for some time. However, none appeared for the respondents in the hearing. Hence, in order to grant last opportunity to the respondents, the matter was kept today. Considering the objection raised in the petition and the subject matter, I deem it appropriate to hear the matter for final disposal at admission stage.

3. The respondents had instituted Special Civil Suit No. 76 of 2009 against the petitioner for specific performance of contract for execution of a registered sale deed in respect of the suit property and, in the alternative, for recovery of Rs. 9,00,000/- together with interest from the petitioner. It was the contention of the plaintiffs in the suit that the petitioner had advanced an amount of Rs. 1,00,000/- to the respondents vide cheque bearing No. 1060059 drawn on Aurangabad Jalna Gramin Bank, Branch Samarth Nagar, Aurangabad, from Savings Account No. 9852.

4. Learned counsel for the petitioner submits that the petitioner has categorically denied the said averment of the plaintiffs. In the meantime, the plaintiffs adduced their evidence and closed the same. Thereafter, the defendant/present petitioner filed his examination-in-chief and he is presently under cross-examination.

5. In the meantime, the plaintiffs filed an application requesting the Court to issue witness summons to the Branch Manager of Aurangabad Jalna Gramin Bank. The petitioner objected to the said application on the ground that once the defendant has opened his evidence, such an application could not have been filed by the plaintiffs. It is further submitted that it was for the plaintiffs to adduce such evidence in support of the pleadings in the suit and for the purpose of the prayers made therein. Having failed to do so at the appropriate stage, such an application could not have been filed belatedly.

6. An alternate argument is advanced on behalf of the petitioner that, even otherwise, unless the defence evidence is completed, it would not be open for the plaintiffs to file such an application, and therefore the learned Civil Court was not justified in issuing witness summons to such witness until the defence evidence was concluded.

7. I have heard Mr. Bora extensively. I have also gone through the paper book of the writ petition. The compilation comprises the pleadings of the parties. It is seen that the petitioner has denied that he has ever issued such cheque to the plaintiffs. May it be, this is convincing argument by the petitioner that while the defence evidence is open before the Court and has not yet been concluded by the defendants, there was no occasion for the plaintiffs to file such application, nor was it proper for the learned Civil Court to issue summons to the witness proposed by the plaintiffs at this juncture.

8. The answer to the question as to whether the plaintiffs can seek summons to lead additional evidence even after closure of evidence would depend upon the facts and circumstances of each case. The fact remains that while the defence evidence is not yet over and while the defendant is under cross-examination by the plaintiffs, the learned Civil Court was not justified in allowing the application of the plaintiffs and issuing witness summons to the said witness. It is seen from the record that this Court vide order dated 23.01.2024 has stayed the impugned order dated 05.01.2024 passed by the learned Civil Judge, Senior Division, Aurangabad. The interim relief is still in operation.

9. In view of this, I deem it appropriate to pass following order :

ORDER

- a. The writ petition is allowed partly.
- b. The impugned order dated 05.01.2024 passed by the learned Civil Judge, Senior Division, Aurangabad is quashed and set aside.
- c. Depending upon the circumstances, upon closer of the petitioner's evidence, the plaintiffs may file fresh application to issue witness summons to the Branch Manager of Aurangabad Jalna Gramin Bank.
- d. The writ petition is disposed of accordingly.

[AJIT B. KADETHANKAR, J.]