



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 5117 OF 2025

Nanuji Lalji Selokar (dead) Thru. LRs Vs. Shekhar s/o Pralhad Agrawal

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. N.B. Raut, Advocate for petitioners.
Mr. Krishna S. Motwani, Advocate for respondent.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE : 10.02.2026

Heard learned counsel for petitioners as well
as respondent.

2. By this petition, the petitioners' challenge is to
order dated 21.07.2025 passed by the trial Court rejecting
the application at Exhibit 10 for grant of leave to defend
in the summary suit.

3. The petitioner is the original defendant in the
summary suit filed by the respondent, by which, the
respondent has prayed for recovery of an amount of
Rs.12,55,000/-. After receipt of the summons in the
summary suit, the defendant has appeared and filed an
application at Exhibit 10 for leave to defend. The
application was opposed by the original plaintiff and by
order dated 21.07.2025, the same is rejected, which is
subjected to challenge by way of instant petition.

4. Learned counsel for petitioner submits that the original defendant is entitled to raise his defense to contest the suit on merits. He submits that the defendants had earlier replied to the notice issued by the plaintiff by reply notice dated 15.07.2022 and thus, they have a valid defense to contest the summary suit. He submits, however, the trial Court has rejected the application only on the ground that relevant document of reply notice was not placed on record.

5. Relying upon the judgment in the matter of *B.L. Kashyap and Sons Limited Vs. JMS Steels and Power Corporation and anr.*, reported in (2022) 3 SCC 294, learned counsel for petitioner submits that the grant of leave to defend is the rule and there is no exceptional case to completely deny leave to defend to the defendants.

6. While opposing the petition Mr. Motwani, learned counsel for respondent/original plaintiff submits that the defendants do not have any triable defense and on failure to file alleged reply/notice, there is no reason to grant any leave to defend.

7. Perusal of the impugned order shows that the trial Court has rejected the application by observing that the suit is filed on the basis of promissory note and the petitioner has failed to place on record any document to show that the notice dated 01.07.2022, was replied by the

defendants. The petitioner has placed on record the document of reply/notice dated 15.07.2022 at Annexure-F and on the basis of this, it appears that the defendants need to be granted an opportunity to place this document on record before the trial Court for consideration of the application for leave to defend.

8. Hence, in view of this limited controversy, in order to grant an opportunity to the defendants to submit the relevant document in support of his contentions for leave to defend, the matter needs to be remanded to the trial Court.

9. Hence, the order dated 21.07.2025 passed by the trial Court on application at Exhibit 10 is quashed and set aside. The matter is remanded to the trial Court for deciding the application at Exhibit 10 afresh after considering the document of reply/notice dated 15.07.2022 and by granting an opportunity of hearing to both the parties.

10. In view of this, writ petition is disposed of
No order as to costs.

(Prafulla S. Khubalkar, J.)