



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

WRIT PETITION NO. 8049 OF 2025

(Subhashchandra s/o Ramkrushna Rangarekar @ Rangari vs. The State of Maharashtra through
the District Collector, Akola and others)

*Office Notes, Office Memorandum of Coram,
appearances, Court's orders or the directions,
and Registrar's orders.*

Court's or Judge's order

Mr. N.S.Khubalkar, Advocate for petitioner.
Mr. H.D.Dubey, AGP for respondent Nos.1 and 4.
Mr. A.M.Tirukh, Advocate for respondent Nos.2 and 3.

CORAM : ROHIT W. JOSHI, J.
JANUARY 27, 2026

- 1) The present petitioner had filed a suit being Special Civil Suit No.22/2016 inter alia claiming compensation from the respondents/defendants on the ground that due to defective construction of adjoining percolation tank his fields get water logged and cannot be used for cultivation. The said suit came to be dismissed by the learned trial Court against which first appeal is preferred by the present petitioner. In the said appeal an application under Order 41 Rule 27 came to be filed vide Exh.10 seeking permission to examine Talathi of the concerned village. The said application came to be rejected by the impugned order dated 22/09/2024. Perusal of the application will demonstrate that the petitioner has stated that an application for issuance of witness summons to the concerned Talathi was filed before the learned trial Court and the said application was erroneously rejected by the learned trial Court. It is thereafter stated that Talathi will be most important witness to throw light on the controversy involved in the matter and therefore, the application for issuing witness summons to Talathi ought not to have been

rejected. Perusal of the order will indicate that the learned appellate Court has observed that the petitioner ought to have taken appropriate measure for challenging the order dated 13/11/2019 passed by the learned trial Court, which he did not take. On this ground the contention with respect to correctness of the order dated 13/11/2019 is rejected by the learned first appellate Court.

2) With respect, the learned first appellate Court has erred in rejecting the application on this ground. Perusal of the Order 41 Rule 27(a) will indicate that refusal on the part of the learned trial Court to admit evidence which otherwise ought to have been admitted, is a ground for permitting the parties to appeal to lead additional evidence. Likewise Section 105(1) of the Civil Procedure Code also provides that in case any party to a suit is aggrieved by an order passed against him by the learned trial Court, a challenge to the said order can be raised as a ground of appeal in the appeal which is preferred against the decree by the learned trial Court.

3) The learned first appellate Court has not rejected the argument of the petitioner/plaintiff as regards the relevance of the evidence of the Talathi. Having regard to the controversy involved in the matter, in the considered opinion of this Court, the learned trial Court should have allowed the application for permission to issue witness summons to the concerned Talathi. This was rightly set up as a ground for permission to lead additional evidence in the application at Exh.10 filed before the learned first appellate Court.

4) In view of the aforesaid in the considered opinion of this Court, the impugned order is unsustainable and is liable to be quashed and set aside.

5) In view of the aforesaid, the petition is allowed in the following terms :-

1. The order dated 22/09/2025, passed by 3rd Adhoc District Judge, Akola on application below Exh.10 in R.C.S. No.123/2022 is quashed and set aside and the said application is allowed.
2. No order as to costs.

(ROHIT W. JOSHI, J.)