



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

WRIT PETITION NO. 892 OF 2026

Babulal Hiralal Kalantri

Vs.

Himatsingka Seide Limited, Bangalore

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

Court's or Judge's Orders.

Mr. Yash Maheshwari, Advocate for petitioner.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE : 13.02.2026

Heard learned counsel for the petitioner.

2. The petitioner's challenge is to order dated 08.07.2025 passed by the trial Court below Exhibit 1 in Summary Civil Suit No.3/2024.

3. Learned counsel for the petitioner submits that the petitioner is the original plaintiff, who has filed a suit under Order 37 Rule (1) & (2) of the Code of Civil Procedure, for recovery of money which was valued at Rs.60,74,317/-. After the suit was filed a summons in Form No.4 was issued by the Civil Court, which was 'Summons in A Summary Suit' and the summons was accordingly, served upon the defendant. Nobody appeared on behalf of the defendant and therefore, an *ex-parte* order

was passed. In this background, the trial Court passed an order below Exhibit 1 directing the plaintiff to take steps in accordance with Order 37 Rule 3(4) of the Code of Civil Procedure, by observing that the earlier suit summons was issued under Order 8 Rule 1 of the Code of Civil Procedure. He submits that the directions to take action in accordance with Rule 3(4) is unwarranted considering the fact that the summons in Form No.4 of the summary suit was already served upon the defendant.

4. Learned counsel for petitioner submits that considering the controversy involved in the instant petition, which is in between the plaintiff and the Court, the instant petition may be taken up for consideration even without issuing notices to the respondent. In support of his submissions, he relies on judgment of the High Court Delhi in the matter of *S.S. Steel Industry Vs. Shri Guru Hargobind Steels* reported in *2019 SCC OnLine Del 9964*. Considering the controversy involved, the petition is taken up for consideration.

5. A perusal of the impugned order shows that the trial Court has wrongly considered the summons to be a summons under Order 8 Rule 1 of the CPC and based on this incorrect observation has proceeded to pass the impugned order. Further having found that the summons of the summary suit was served, there is a direction to

comply with the provisions to issue a summons for judgment in Form No.4-A. It appears that the direction is issued without considering the provisions of Order 37 of the Code of Civil Procedure.

6. Having regard to the entire controversy involved and considering the impugned order which is passed by wrongly considering the earlier summons being under Order 8 Rule 1 of the CPC, the matter needs to be remanded to the trial Court for fresh consideration. Hence, the order dated 08.07.2025 passed by the trial Court, is quashed and set aside. The matter is remanded to the trial Court for considering the issue afresh and pass appropriate orders after hearing the petitioner/plaintiff again.

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

(Prafulla S. Khubalkar, J.)