

MHLA050010022017



Special C.S. No. 9/2017
Gangadhar and ors Vs Sambhaji and ors

Order below Exhibit- 401

The plaintiffs have filed this application to set aside the order of evidence close passed against them on Exh. 1 on 1.12.2022.

2) The defendants have taken strong objection by giving say on the application.

3) Heard both sides. It is argued by the advocate for the plaintiffs that on that day the advocate for the plaintiffs was not present but the plaintiff was present. He could not take steps, and therefore, the order of evidence close was passed. The plaintiff has submitted the separate application for the witness summons. Hence, that order may be set aside.

4) At the outset, it is necessary to note that this suit is time bound by Hon'ble High Court. On 19-09-2022 the cross examination of plaintiff namely Gangadhar was completed and the suit was pending for the further evidence of the plaintiff. On 23-09-2022, the plaintiff submitted application to issue witness summons. Accordingly, witness summons was issued. But the report of the witness summons was not received. Therefore, on the application of the plaintiff, the witness summons was again issued

on 7-10-2022 and it was given by hand to the plaintiff for service. The report of summons was received from Court at Satana District Nashik on 24-11-2022. It appears from the report that the summons was not served as the bailiff was not available. The summons was taken by the plaintiff on 10-10-2022 by hand. The next date was kept for appearance of the witnesses on 2-11-2022 due to meanwhile Diwali vacations. As the plaintiff knows this suit is time bound by the Hon'ble High Court, the plaintiff ought to have appointed special bailiff for service of witness summons. But the plaintiff failed to take such step, therefore, the witness summons was not served.

5) The plaintiff has submitted the list of witnesses at Exhibit-70 and mentioned names of 25 witnesses therein. As the case is time bound, the plaintiff could have brought any witness in that list before the court until the service of witness summons as mentioned above. But the plaintiff did not bring the witness. Therefore, the detailed order on Exhibit-1 was passed and evidence of the plaintiffs was closed.

6) Along with this application the plaintiffs have again submitted the application for issue of witness summons. The plaintiffs were given ample opportunity and much time to bring witnesses. In view of the above mentioned facts, the plaintiff ought to have brought other witnesses and to file their affidavits of examination-in-chief, to show their diligence to adduce evidence. But instead of that the application for witness summons is given, which will again kill the time of the Court. Thus, I do not find the

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justifiable reason to set aside the order of evidence close passed against the plaintiffs. Hence, I pass the order.

ORDER

Application is rejected.

Date : 05-12-2022

(P. A. Savadikar),
Civil Judge Senior Division,
Ahmedpur.