

**Wasudeo Vs. Pramod and Another**

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**SooperKanoon Citation :** [sooperkanoon.com/1175325](http://sooperkanoon.com/1175325)

**Court :** Mumbai Nagpur

**Decided On :** Jul-04-2014

**Judge :** A.P. Bhangale

**Appeal No. :** Writ Petition No. 2162 of 2014

**Appellant :** Wasudeo

**Respondent :** Pramod and Another

**Judgement :**

### **Oral Judgment**

1. Rule. Rule made returnable forthwith. Heard the matter by consent of learned Counsel appearing for both the parties.
2. By this petition the petitioner/plaintiff challenges orders dated 23.1.2014 and 30.1.2014, passed by the learned Civil Judge Junior Division, Patur, whereby the application filed by the petitioner/plaintiff for issuance of summons to witness Shri Mahadeo Ghonge was rejected by order passed below Exh.32 and right to adduce evidence of the petitioner/plaintiff was forfeited by order passed below Exh.1.
3. The respondents/defendants have filed their caveat application to oppose this petition.

4. The grievance of the petitioner/plaintiff is that witness on behalf of the petitioner/plaintiff named Shri Mahadev Ghonge filed his affidavit in support of the petitioner/plaintiff on 10.1.2014 and he was to attend the Court for cross-examination on 16.1.2014, but witness Shri Ghonge remained absent on the ground that there was sudden sickness of his grand-son and the petitioner/plaintiff had applied for adjournment.

5. It is alleged that the respondents/defendants influenced the witness not to depose in pending Regular Civil Suit No.25 of 2012 under threat. Under these circumstances, the petitioner/plaintiff had filed praecipe dated 23.1.2014 informing the fact, which came to the notice of the petitioner/plaintiff; to the Presiding Officer of the Court. Learned trial Judge was requested to summon the witness concerned for the purpose of cross examination.

6. In the facts and circumstances of the case, learned Counsel appearing for the petitioner/plaintiff submits that in view of Order XIX Rule 2 of the Civil Procedure Code, the trial Court ought to have used its powers to order attendance of the witness who had sworn affidavit in evidence but did not turn up for the purpose of cross examination or further evidence when required. The trial Court can compel attendance of such absent or reluctant witness in the larger interest of justice (unless the witness is specifically exempted from the personal appearance in the Court) on the day of hearing when the Court directed him to attend the trial. For this reason, the petitioner/plaintiff had applied for issuance of witness summons to Shri Ghonge to be examined as witness in the Court with reference to his affidavit sworn in evidence before the trial Court.

7. Learned trial Judge while passing order below application Exh.32, appears to have misdirected himself and ignored the provisions under Order XIX Rule 2 of the Code of Civil Procedure. When the witness had sworn affidavit as evidence in the Court, it was his duty to depose as to facts of the case personally known to him and the trial Court was empowered to compel attendance of such reluctant witness who had sworn and filed affidavit of examination-in-chief in the Court. Since witness did not turn up to depose in the case on appointed date of hearing for to be cross examined with reference to the affidavit solemnly affirmed/sworn and

placed on the record of the trial Court. Either of the parties by adopting evasive or evil/dishonest tactics i.e. not pressing the affidavit filed, or otherwise trying to pollute pure stream of justice by influencing the witness, cannot be allowed to avoid the trial according to law. It is the duty of the trial Judge to ensure that in the larger interest of justice the case must be taken to its logical end by just and legal conclusion.

8. In that view of the matter, the impugned orders must be quashed and set aside.

9. In the result, the writ petition is allowed. The impugned order rejecting application Exh.32 is quashed and set aside including the order of forfeiture of the right of the petitioner/plaintiff to lead the evidence. Learned trial Judge is directed to pass appropriate orders according to law so as to compel the attendance of the witness and to proceed with the recording the evidence. The parties to appear before the trial Court on the date fixed for hearing by the trial Court. Thus, the writ petition is allowed accordingly. Rule is made absolute in above terms. No order as to costs.

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