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**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

**BEFORE
HON'BLE SHRI JUSTICE GAJENDRA SINGH**

ON THE 6th OF DECEMBER, 2023

MISC. PETITION No. 7184 of 2023

BETWEEN:-

**MANKUNWAR BAI W/O JUWANSINGH, AGED 72 YEARS,
R/O GRAM DATANA TEHSIL UJJAIN (MADHYA
PRADESH)**

.....PETITIONER

(BY SHRI AJAY JAIN GIRIYA - ADVOCATE)

AND

- 1. SHOUKAT S/O HAJI CHITU PATEL R/O GRAM
DATANA TEHSIL UJJAIN (MADHYA PRADESH)**
- 2. M.P. GOVERNMENT THROUGH COLLECTOR
KOTHI PALACE, UJJAIN (MADHYA PRADESH)**

.....RESPONDENTS

(BY MS. VINITA DWIVEDI - PANEL LAWYER)

.....
*This petition coming on for admission this day, the court passed the
following:*

ORDER

With consent of the petitioner, matter is heard finally.

This petition under Article 227 of the Constitution of India has been filed by the petitioner challenging the order dated 30.10.2023 passed by II Civil Judge, Senior Division, Ujjain in Case No.425A/2017 whereby petitioner/plaintiff application for summoning witnesses namely Mubarik Patel S/o Gappu Patel and Rameshwar S/o Hariram has been rejected and I.A. No.8790/2023, which is an application for stay/ad interim writ has been

preferred for stay of the further proceedings of the Court of II Civil Judge, Senior Division, Ujjain in Civil Suit No.425A/2017.

2. On perusal of the impugned order, the reasons for rejection of application is mentioned as the name of those witnesses are not mentioned in plaint and it is also not stated that the evidence of those witnesses is relevant and the plaintiff has not submitted list of witnesses.

3. On perusal of plaint filed as (Annexure P-3), it is gathered that the suit of plaintiff is based on agreement dated 08.10.2013 and copy of agreement dated 08.10.2013 is filed as (Annexure P-2), in which the proposed witnesses Mubarik and Rameshwar are mentioned as attesting witnesses.

4. In the light of Order 16 Rule 1(3) of C.P.C. and Annexure P-2, the plaintiff/petitioner may be permitted to call by summoning through Court. The stay of the proceedings will not serve any purpose.

5. In view of the facts and circumstances of the case, in the considered opinion of this Court, just to avoid unnecessary delay this petition is being disposed off without issuing notice to the respondent.

6. The impugned order dated 30.10.2023 passed by II Civil Judge, Senior Division, Ujjain in Case No.425A/2017 is set aside and petitioner/plaintiff is permitted to summon both the witnesses through Court subject to deposit of Rs.1,500/- per witness in advance in Court within seven days as the expenses of those witnesses. It is also made clear that if the petitioner/defendant does not conduct examination of the witnesses before the trial Court, then no further opportunity shall be granted to the petitioner/plaintiff. The defendant shall be provided opportunity to rebut the plaintiff evidence.

With the aforesaid observation, this petition is finally disposed off.

C.C. as per rules.

**(GAJENDRA SINGH)
JUDGE**

Shruti

