

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 8917 OF 2014

Shri Kishor Kalidas Wani and others ...PETITIONERS

versus

Sow Anjanaben Wd/o Rajendra Shah ...RESPONDENT

.....
Mr. A.G. Magare, Advocate for Petitioners
Mr. R.R. Sancheti, Advocate for respondent
.....

CORAM : SUNIL P. DESHMUKH, J.

DATED : 11th AUGUST, 2015

Order :-

1. After hearing learned counsel for parties, it appears that defendants had filed application Exhibit-77, after plaintiff had filed her affidavit of examination-in-chief, contenting that the same had been filed about four years after closure of evidence by the defendants. In such a case, application ought not to have been considered *inter-alia* having regard to Order XVIII, Rule 3 of the Code of Civil Procedure, wherein plaintiff has accepted to begin with evidence.

2. Learned counsel for respondent-plaintiff, however, counters the submissions of Mr. Magare and submits that specific *pursis* had been filed by the plaintiff, pursuant to which affidavit of examination-in-chief of plaintiff has been filed. Affidavit of examination-in-chief has been filed with a view to rebut evidence led by the defendants in respect of additional facts. He further submits that trial court has passed appropriate order and there is no infirmity in the same and urges that no interference be caused in the same since it cannot be termed as perverse.

3. In regular civil suit No. 22 of 2008 pending before the civil judge, junior division, Taloda, Nandurbar District, taking into account pleadings, respondent-plaintiff filed *pursis* at Exhibit-36 stating that she does not want to lead evidence in respect of rest of the issues and as regards issue No. 7, burden of which had been on the defendants and had specifically reserved right to lead evidence in respect of the same after closure of defendants' evidence. It may be pertinent to refer to also that defendants had come out with a theory of relinquishment of share by the plaintiff in favour of defendants. As such, rest of the issues deemed in the light of that and *pursis* Exhibit-36 had been filed by plaintiff.

4. Having regard to aforesaid, this does not appear to be a case wherein court can grant indulgence to the petitioners. I am, therefore, not inclined to entertain writ petition and the same, as such, stands rejected.

5. At this stage, learned counsel for the petitioners requests to grant liberty to the petitioners to file appropriate application. Needless to refer to that it is for the parties to make proper approach by filing proper application and trial court may decide the same on its own merits. Needless to refer further to that aforesaid observations have been made only for rejection of present writ petition and would have no further efficacy.

Sd/-

(SUNIL P. DESHMUKH, J.)

MTK