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

WRIT PETITION NO.10533 OF 2014

Vithoba @ Vithal Mariba Dorwe. ..Petitioner
-Versus-
Gangadhar Vithoba Dorwe and others. ..Respondents

.....
Mr.C.R.Deshpande, Advocate for the Petitioner.
.....

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 25th February, 2015

Per Court:

1 The Petitioner is aggrieved by the impugned order dated 09.09.2014 passed by the Trial Court below Exhibit-115 in RCS No.50/2012.

2 The Petitioner is the original Defendant No.5. The Written Statement has been filed by the Petitioner wherein the contentions of the Plaintiffs have been admitted and it is prayed that the suit be decreed in favour of the Plaintiffs.

3 The Plaintiffs closed their evidence on 20.07.2014. The Defendant Nos.1 to 4 have also adduced their evidence and closed their oral evidence. Since the Petitioner/ Defendant No.5 had filed the Written

Statement praying for decreeing the suit and accepting the contentions set out in the plaint, the recording of oral evidence was closed in the matter.

4 In this backdrop, the Petitioner filed an application Exhibit-115 praying for leave to adduce evidence. By the impugned order, the Trial Court has rejected the said application.

5 The grievance of the Petitioner is that he could have adduced evidence to explain the situation in a better way. His right to lead evidence cannot be taken away. By rejecting application Exhibit-115, the Petitioner is precluded from putting forth his case.

6 I have considered the submissions of the learned Advocate for the Petitioner. It is not in dispute that the Petitioner filed the Written Statement accepting the contentions of the Plaintiffs set out in the plaint. The Petitioner has prayed that the suit be decreed in favour of the Plaintiffs. As such, the Petitioner had not set out such contentions and averments for which he was required to lead evidence either to prove his contentions or to disprove the opponent's contentions. When the Petitioner has nothing to prove or disprove, the Trial Court has rightly declined leave to the Petitioner to record his oral evidence.

7 This Court, in the case of *Kumudini Damodar Magar v/s Bhushan Damodar Magar* reported in **AIR 2004 Bombay 397**, has considered a somewhat similar situation. One of the Defendants in the proceedings before the Trial Court had no defence to make as she had admitted the case of the Plaintiff in her Written Statement. Subsequently, while recording the evidence of the parties, she sought leave to lead evidence prior to the Plaintiff stepping into the witness box. This Court has, therefore, refused the said request while upholding the order of the Trial Court.

8 Relevant observations of this Court are found in paragraphs 16 and 17 which read thus:-

- “16. With the above understanding of the scheme of Order 18 of C.P.C. in general and Rules 1, 3A and 16 thereof in particular, if one turns to the facts of the case in hand, it would be clear that defendant No.2 is not being examined as witness of the plaintiffs. She is being examined as party defendant. She has admitted all the allegations or the case pleaded by the plaintiffs. She did not contend that either in point of law or on some additional facts that the plaintiffs are not entitled to any part of relief which they seek. Had it been so, she would have got a right to begin, with the permission of the Court. However, this is not the case. In this view of the matter, it was not open for the Court to permit examination of defendant No.2 prior to the commencement of the evidence of the plaintiffs.
17. The submission of Ms.Godse, appearing for the respondents, that defendant No.2 suffered heart-attack as such one cannot predict the duration of her life. In

her submission, defendant No.2 was rightly allowed to be examined first. Submission made is misplaced. As a matter of fact, in view of the admission of the case of the plaintiffs in the written statement filed by defendant No.2, it is not open for her to lead any evidence. She is not entitled to lead any evidence in defence, rather she has no defence to prove. It was open for the plaintiffs to examine defendant No.2 as their witness.”

9 In the instant case, the Plaintiffs have already stepped into the witness box and have led evidence in support of the Plaint. As such, in the light of the fact situation and the ratio laid down by this Court in Kumudini Damodar Magar (supra), I do not find that the impugned order could be termed as perverse or erroneous so as to cause grave injustice to the Petitioner. The Writ Petition being devoid of merit is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)