

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6708 OF 2014

Rajan Udhav Dixit ... Petitioner
Vs.
Pushpanjali Satish Lakde and others ... Respondents

Mr. Uday P. Warunjikar for Petitioner.

CORAM : R. G. KETKAR, J.
DATE : 1ST JULY, 2015

P.C. :

Not on Board. At the request of Mr. Warunjikar, taken up in the production Board.

2. Heard Mr. Warunjikar, learned Counsel for petitioner.
3. By this Petition under Article 227 of the Constitution of India, petitioner has challenged the order dated 29.03.2014 passed by the learned Civil Judge, Junior Division, Vite below exhibit-167 in Regular Civil Suit No.152 of 2011. By that order, the learned trial Judge has rejected the application.
4. Mr. Warunjikar submitted that on behalf of the plaintiff, application at exhibit-167 was filed on 11.02.2014 seeking permission to lead secondary evidence and for that purpose prayer was made for issuing witness summons. The said application was replied on 10.03.2015 vide exhibit-168. On behalf of the defendants, it was contended that the oral evidence of the plaintiff is over and plaintiff cannot take oral evidence of other witnesses. Defendants however, gave no objection for issuing witness summons.

5. Mr. Warunjikar submitted that plaintiff also filed application exhibit-170 on 29.03.2014 for leading additional evidence under Order 41, Rule 27 of the Code of Civil Procedure, 1908 as the evidence of plaintiff and defendants was over. He submitted that by the impugned order, the learned trial Judge rejected the application as Order 41, Rule 27 C.P.C. deals with the powers of the appellate Court to admit additional evidence and not of the trial Court. He submitted that the impugned order appears to have been wrongly passed below exhibit-167 instead of exhibit-170. Mr. Warunjikar seeks permission to withdraw application exhibit-170 with a liberty to take out appropriate application. He further submits that it may be clarified that the learned trial Judge will decide application exhibit-167 as the impugned order is passed below exhibit-170.

6. In view thereof Petition is disposed of as not pressed with liberty to the petitioner to withdraw application at exhibit-170 with a liberty to file fresh application. It is made clear that by granting liberty, I have not expressed any opinion on the merits of the application. All contentions of the parties on merits are expressly kept open. The learned trial Judge will decide exhibit-167 on the basis of material on record and in accordance with law as also uninfluenced by the impugned order.

(R. G. KETKAR, J.)