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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.4177/2017

Ukha Shenpadu Mali.

...Petitioner..

Versus

Rekha Anil Karankal & others.

...Respondents...

.....

Shri Bhausaheb Deshmukh, Advocate h/f Shri B.S. Deokar,
Advocate for petitioner.

.....

CORAM: M.S. SANKLECHA, J.

DATE: 11.04.2017

ORDER :

1] This petition under Article 227 of the Constitution of India challenges the order dated 3.11.2016 passed by the learned Civil Judge, Junior Division, Dondaicha Dist.Dhule. By the impugned order, the petitioner's (original plaintiff) application to lead additional evidence was rejected.

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2] The impugned order while rejecting the application records the fact that the issue in respect of which the additional evidence was sought to be led, was in respect of encroachment by the respondents (defendant nos.1 & 2) on public road. It further records that the issue on this very dispute had been framed and the burden was on the petitioner (plaintiff) to prove the same. It was thereafter that the petitioner (plaintiff) led his evidence and after completing his evidence, he voluntarily closed it. Consequent to the above, the respondent (defendant no.1) had also led her evidence and after the petitioner had sought numerous adjournments to cross-examine her, that the present application to lead additional evidence was filed. In the aforesaid facts, the impugned order rejects the petitioner's application for leading the additional evidence.

3] The grievance of the petitioner is that to meet the ends of justice, the learned Judge ought to have allowed leading of the additional evidence and in support thereof, placed reliance upon the decisions of this Court in *Haji Munir Ahmed Mansoori v. State of Maharashtra & others* (MANU/MH/1466/2007) and *Trustees Co.Ltd. v. Ashok*

Raju Shetty & others (MANU/MH/1698/2013).

4] The jurisdiction exercisable under Article 227 of the Constitution of India is a supervisory jurisdiction to ensure that all Courts and statutory Tribunals act within the boundaries of law. It is not an appellate jurisdiction. Therefore, only if the orders under challenge reflect non-exercise of jurisdiction vested in the authority or exercise of jurisdiction not vested in it or acting in a perverse manner or otherwise passing of orders in flagrant violation of law or justice, would entitle to interference under Article 227 of the Constitution. This is clearly not the case in the present facts. The decisions relied upon by the petitioner turned completely on the facts before the Court. In fact, none of the two cases cited suggest that there is a right in every litigant to lead additional evidence. The authority concerned has to exercise its judicial discretion in the context of the facts before it while allowing or rejecting an application for leading additional evidence at a late stage in the proceedings.

5] In the above view, the impugned order dated 3.11.2016 passed by the learned Civil Judge, Junior

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Division, Dondaicha, would not warrant interference in exercise of jurisdiction under Article 227 of the Constitution of India.

6] Therefore, the petition is dismissed. No order as to costs.

(M.S. SANKLECHA, J.)