

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 288 OF 2015***

Sou. Smita Balasaheb Desai	...Petitioner
Versus	
Sou. Arunadevi Rajendra Desai & Ors.	...Respondents

Mr. Samarth R. Moray i/b. Mr. Vishwanath S. Talkute, for the petitioner.
Mr. Anand S. Patil, for the respondents.

***CORAM : SMT. SADHANA S. JADHAV, J.
DATE : 28th November, 2017.***

P.C. :

1. On 20.11.2017, this Court had requested the Advocates to ascertain the progress of Regular Civil Suit No.84 of 2007 pending before the Civil Judge, Junior Division, Chandgad.
2. The learned counsel for the petitioner submits that the plaintiff has closed the evidence. The defendant has to lead evidence.
3. The plaintiff had filed an application below Exhibit 5 under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure. The said application was rejected. Being aggrieved by the same, the plaintiff had

approached the appellate Court by filing Misc. Civil Appeal No.13 of 2008. The appeal was allowed and hence this Writ Petition.

4. Since the suit has progressed substantially, it would not be proper to consider the merits of the orders passed below Exhibit 5 under Order XXXIX Rules 1 and 2. All contentions of the parties are kept open. The observations of the trial Court as well as the appellate Court are restricted to an application under Order XXXIX Rules 1 and 2 of C.P.C.

5. In view of this, the Petition stands disposed of with no order as to costs.

6. It is made clear that this Court has not gone into the merits of the matter. The trial Court shall decide the suit on the basis of the evidence adduced and issues that are framed without being influenced by the observations of the appellate Court.

(SMT. SADHANA S.JADHAV, J.)