

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1036 OF 2017

Aashish Sumant Bhagat and another .. **Petitioners**

Versus

Ajit Zumbarlal Kunkulol and another .. **Respondents**

Mr. Dnyaneshwar Patil h/f. Mr. Niting B. Suryawanshi, Advocate for the Petitioners.

Shri Abhaykumar D. Ostwal, Advocate for Respondent No. 1.

Mr. Kiran D. Jadhav, Advocate for Respondent No. 2.

CORAM: S. V. GANGAPURWALA, J.

DATE: 16th August, 2018

PER COURT :

1. The present petitioners are the original defendants. The respondents – plaintiffs have filed suit for compensation on the ground of defamation. The plaintiffs led their evidence. Thereafter the matter is fixed for the evidence of the defendants. The defendants filed an application for allowing them to lead evidence first of Sub Divisional Officers. The said application is rejected.

2. According to the learned counsel for the petitioners the evidence of the Sub Divisional Officers is necessary, so also, the record with the Sub Divisional Officers is necessary. The evidence of the Sub Divisional Officers is relevant. If the evidence of the witnesses as named by the petitioners is taken earlier that would be handy for the petitioners to lead further evidence.

3. Mr. Ostwal, learned counsel for respondent no. 1 submits that in view of Order 18 Rule 3 (A) of the Code of Civil Procedure, 1908 the party ought to adduce the evidence first before the evidence of witnesses.

4. I have heard the learned counsel for respective parties.

5. The application no where states as to why the evidence of witnesses is to be led first before the evidence of parties / defendants. It is also observed by the Court that the defendants can

produce the certified copies. The Trial Court may not take a hyper technical approach as the list of witnesses is not filed and names of said witnesses are not given. The right to lead evidence of said witnesses is negatived.

6. Considering the above, I pass following order-

ORDER

The defendants shall examine themselves first and thereafter considering the relevancy may file an application for examination of witnesses which application shall be considered by the Court on its own merits and while doing so the impugned order would not be an impediment.

7. Writ Petition accordingly allowed. No costs.

[S. V. GANGAPURWALA, J.]

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