

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.791 OF 2018

Smt.Sindhubai Dattu Masal & Ors.	.. Petitioners
Vs.	
Baban Khandu Dhaygude & Ors.	.. Respondents

Mr.Kishor K. Malpathak for the petitioners.
Mr.Dilip Bodake for the respondent no.3.

CORAM : R.D. DHANUKA, J.
DATE : 23rd October 2018

P.C.:

. By this petition filed under Article 227 of the Constitution of India, the petitioners (original defendant nos.2, 4 to 8) have impugned the order dated 12th December 2017 below Exhibit-293 allowing the application (Exhibit-293) filed by the original defendant no.3 and permitting the said defendant to lead the evidence.

2. Mr.Malpathak, learned counsel for the petitioners submits that it is an undisputed position that hearing was concluded and matter was adjourned for pronouncement of judgment. The defendant no.3 had filed an application (exhibit-293) for permission to lead the evidence and applied for discharge for earlier advocate on 12th December 2017. Learned trial Judge had allowed the said application (exhibit-293) by an order dated 12th December 2017.

3. Learned counsel placed reliance on the judgment of the Rajasthan High Court in the case of **Rajasthan Financial Corporation**

Vs. Pukhraj Jain & Ors. 2001 AIR (Raj) 71 and in particular paragraphs 3 to 12 thereof. He submits that since the learned trial Judge has already concluded the hearing and had posted the matter for pronouncement of judgment, no further opportunity could have been granted by the learned trial Judge to any of the parties including the defendant no.3 for leading fresh evidence.

4. Mr.Bodake, learned counsel appearing for the respondent no.3, on the other hand, submits that the earlier advocate engaged by his client did not give proper advise and thus his client was required to discharge the said advocate and to seek permission before the learned trial Court to lead fresh evidence. He submits that no prejudice would be caused to the petitioners by granting a liberty to the respondents to lead evidence.

5. Rajasthan High Court in the case of ***Rajasthan Financial Corporation (supra)*** has adverted to several judgments in the said judgment including the judgment of the Hon'ble Supreme Court in the case of ***Arjun Singh Vs. Mohindra Kumar, AIR 1964 SC 993*** and has held that where the hearing is completed, the parties have no further rights or privileges in the matter and it is only for the convenience of the Court that Order XX Rule 1 permits judgment to be delivered after an interval after the hearing is completed. It is held that there is thus no hiatus between the two stages of reservation of judgment and pronouncing the judgment so as to make it necessary for the Court to afford to the party the remedy of getting orders passed on the lines of Order IX Rule 7 of the Code of Civil Procedure, 1908.

6. After adverting to the said judgment in the case of **Arjun Singh (supra)**, the Rajasthan High Court followed the principles of law laid down by the Hon'ble Supreme Court in the case of **Arjun Singh (supra)** and has dismissed the revision petition. In my view, the principles of law laid down by the Hon'ble Supreme Court in the case of **Arjun Singh (supra)** would squarely apply to the facts of this case. In this case, hearing of the case is concluded, the matter was adjourned for pronouncement of judgment. The application thus filed by the respondent no.3 for leading fresh evidence itself was not maintainable. The impugned order dated 12th December 2017 passed by the learned trial Judge allowing such application granting further opportunity to lead fresh evidence is contrary to the principles of law laid down by the Hon'ble Supreme Court in the case of **Arjun Singh (supra)**.

7. In so far as the views expressed by the Rajasthan High Court in the case of **Rajasthan Financial Corporation (supra)** is concerned, the said views are expressed in conformity with the views expressed by the Hon'ble Supreme Court in the case of **Arjun Singh (supra)**. I am in agreement with the views expressed by the Rajasthan High Court in the case of **Rajasthan Financial Corporation (supra)**.

8. I therefore pass the following order :-

- (i) The impugned order dated 12th December 2017 below Exhibit-293 in RCS No.51 of 2004 is quashed and set aside.
- (ii) The application (Exhibit-293) filed by the respondent no.3 is rejected.

- (iii) Learned trial Judge is directed to pronounce the judgment expeditiously.
- (iv) It is made clear that the respondent no.3 is not precluded from raising this as one of the ground under Section 105 of the Code of Civil Procedure, 1908 while challenging the final judgment and decree if the same is adverse against the respondent no.3.
- (v) Writ petition is allowed in aforesaid terms. No order as to costs.

R.D. DHANUKA, J.