

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9923 OF 2017

Ravinder Kumar Agarwal & Ors.	 Petitioners
V/s.	
Ashok Kumar Agarwal & Ors.	 Respondents

Mr. Raj Patel, a/w. Ms. Pinky Patel, i/by M/s. Desai & Diwanji, for the Petitioners.

Mr. Gautam Ankhad, a/w. Mr. Darshan R. Mehta and Mr. Niket Jain, i/by M/s. Dhruve Liladhar & Co., for the Respondents.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 17TH JANUARY 2018.

P.C. :

1. Heard Mr. Patel, learned counsel for the Petitioners, and Mr. Ankhad, learned counsel for the Respondents.

2. The only grievance raised by learned counsel for the Petitioners in respect of the impugned order passed by the Trial Court is pertaining to reserving right of the Plaintiff to lead evidence on 'Issue No.1' also. It is submitted that, the Plaintiff has already filed his affidavit-in-evidence and in paragraph No.11 thereof, he has categorically stated that, he is reserving right to lead evidence in rebuttal, under Order 18 Rule 3 of the C.P.C., only on 'Issue Nos.2 to 4', that have been framed by the Trial

Court, after the Defendants led their evidence on those issues. Thus, when the Plaintiff himself has reserved his right to lead evidence in rebuttal, only on 'Issue Nos.2 to 4'; whereas, as regards 'Issue No.1, the Plaintiff has already filed his affidavit-in-evidence, it has to be held that, the impugned order passed by the Trial Court reserving Plaintiff's right to lead evidence in rebuttal on 'Issue No.1' also, is not correct and is liable to be set aside. Ordered accordingly.

3. Writ Petition is disposed of in the above terms.

4. It is clarified that, as the Plaintiff has already filed his affidavit-in-evidence on 'Issue No.1', his cross-examination will proceed first.

5. Learned counsel for the Respondents, however, submits that, as the Suit is of the year 2000, this Court should direct that no party should seek adjournment in the matter.

6. Needless to state that, both the parties, being aware of the pendency of this Suit since last more than 18 years, will extend utmost co-operation to the Trial Court and will avoid making any application for adjournment on frivolous grounds.

[DR. SHALINI PHANSALKAR-JOSHI, J.]