

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

CIVIL REVISION APPLICATION NO.449 OF 2017

Suman Ajay Shah

.. Applicant

Vs.

Khupse & Patil Steels Pvt. Ltd.

.. Respondent

Mr.Ranjit Singh for the applicant.

Ms.Lalita S. Phadke for the respondent.

CORAM : R.D. DHANUKA, J.

DATE : 28th August 2018

P.C.:

1. By this civil revision application filed under Section 115 of the Civil Procedure Code, 1908, the applicant has impugned the order dated 12th April 2017 passed by the 3rd Joint Civil Judge, Senior Division, Thane rejecting the application filed by the applicant (original defendant) for recall of witness examined by the defendant.

2. The suit was filed in the year 2013. The applicant had filed written statement in December 2013. After framing of issues, the respondent proceeded with his evidence and concluded on 21st April 2016. The applicant thereafter has filed his affidavit of evidence on 28th September 2016 but has not been proceeding with the matter on one or the other grounds and seeking adjournment.

3. Learned trial Judge has held that though in the written statement, copies of letters which are placed on record by the original plaintiff are denied, there is no defence raised in respect of the pleadings in paragraph 6 pertaining to those letters.

4. The applicant was granted an opportunity to cross-examine the plaintiff's witness which opportunity was already availed of by the applicant. The learned trial Judge has rightly rejected the application filed by the applicant (original defendant) for recall of witness examined by the defendant. The finding of the learned trial Judge are not perverse and thus cannot interfere with by this Court under Section 115 of the Civil Procedure Code, 1908.

5. The applicant has already filed an application for filing additional affidavit of evidence before the trial Court. The learned trial Judge shall decide the said application on its own merit. Learned trial Judge shall proceed with the suit after disposing of the said application made by the applicant expeditiously and shall not grant any unnecessary adjournment to any of the parties.

6. Civil revision application is accordingly dismissed. No order as to costs.

R.D. DHANUKA, J.