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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7830 OF 2015

Madhuri A. Redekar	...Petitioner
V/s.	
Sunil R. Ramshetti & Ors.	...Respondents

Mr.Surel Shah for the Petitioner.

Mr.Anand Kulkarni for the Respondent No.1.

Ms.Priyal Sarda for the Respondent Nos.2, 4 and 5.

CORAM : R.D. DHANUKA, J.
DATE : 30TH AUGUST, 2018.

P.C. :-

1. By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order dated 17th April, 2015 passed by the 5th Joint Civil Judge, Junior Division, Solapur allowing the application filed by the respondent (original plaintiff) *inter-alia* praying for permission to reserve the liberty to the plaintiff to adduce evidence by way of rebuttal after adducing evidence by the defendants.

2. The application for reserving the liberty to adduce evidence in rebuttal was made on the ground that there were 11 issues framed by the learned trial Judge out of which burden to prove some of the issues was on the plaintiff and on the other issues on the defendants.

3. It is not in dispute that the plaintiff has led evidence on all the issues together. In my view, the plaintiff was at liberty to exercise that option whether to lead evidence on all the issues together or to exercise his right to adduce evidence in rebuttal after the evidence of the defendants was closed. After exercising the first option, after leading oral evidence on all the issues, the plaintiff could not have made an application for liberty to adduce evidence in rebuttal. In my view, the said application itself was not maintainable. The impugned order passed by the learned trial Judge on 17th April, 2015 is contrary to the Order XVIII Rule 3 of Code of Civil Procedure, 1908 and is accordingly set aside. The application filed by the plaintiff (Exhibit – 76) is dismissed.

4. The writ petition is allowed in aforesaid terms. There shall be no order as to costs.

(R.D. DHANUKA, J.)

Vasant
Anandrao
Idhol

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by Vasant
Anandrao Idhol
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2018.09.01
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