

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****WRIT PETITION NO. 5562 OF 2017****Himanshu Prabhakar Bhalerao****..... Petitioner****VERSUS****C.P.Bagal & CO.****..... Respondent**

Mr.Anand Kulkarni for the Petitioner.

Mr.Surel Shah for the Respondent.

CORAM : R.D. DHANUKA, J.**DATE : 20th AUGUST, 2018****P.C.**

By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order dated 12th August, 2014 passed by the learned trial judge dismissing the application filed by the petitioner (Ex.56) seeking permission to reserve his rights to adduce his rebuttal evidence.

2. It is not in dispute that at the instance of the original defendant, an additional issue has been framed i.e. “whether the defendant proves that the plaintiff has committed breach of the contract?”. The evidence of the plaintiff is already concluded. However in view of the additional issue, the plaintiff had applied for permission to reserve his rights to adduce his rebuttal evidence which has been rejected by the learned trial judge on the ground that the additional issue is consequential to all other issues and thus no such liberty shall be granted to the petitioner to adduce his rebuttal evidence.

3. In my view, the learned trial judge ought to have granted liberty to the petitioner to adduce his rebuttal evidence in view of the additional issues framed by the learned trial judge after closure of the evidence of the respondent.

4. The impugned order dated 12th August, 2014 is accordingly set aside.

5. The application filed by the petitioner (original plaintiff) at Ex.56 is allowed.

6. The petitioner shall be allowed to adduce rebuttal evidence after the evidence of the respondent is closed.

7. Writ petition is disposed of in the aforesaid terms. No order as to costs.

[R.D. DHANUKA, J.]