

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

WRIT PETITION NO. 6412 OF 2018

Sandip Dadaso Shirsat & Ors.

...Petitioners

Versus

Dadaso Maruti Shirsat & Ors.

...Respondents

.....

Mr.Rupesh Zade for the Petitioners.

Mr. P.M. Barge for Respondent Nos. 1, 3,4 and 5.

Ms.Bhakti P. Bhosale for Respondent No.2.

.....

**CORAM: MRS.MRIDULA BHATKAR, J.
DATED: JULY 26, 2018**

P.C. :

1. Rule. Rule made returnable forthwith. By consent of the parties, the Petition is heard finally and disposed of at the stage of admission.

2. This Petition is directed against the order dated 28th August, 2017 passed by the learned Civil Judge, Senior Division, Baramati thereby rejecting the application below exhibit 36 in Special Civil Suit No. 27 of 2015.

3. The learned Counsel for the petitioners/plaintiffs submits that petitioner No.1 i.e., plaintiff No.1 could not remain present on the earlier occasion, as he is working in the police department and had to go for Bandobast duty. He further submits that petitioner No.1/plaintiff No.1 undertakes that he shall remain present for cross-examination and shall not take any adjournment. Hence, he prays that petitioner No.1/plaintiff No.1 be allowed to lead evidence, as the trial Court has closed the plaintiff's evidence.

4. The learned Counsel for the respondents opposes this Petition.

5. Heard submissions. Perused impugned order and the records placed before this Court. The suit is of 2015. The issues are settled. It is informed that plaintiff No.1 has filed an affidavit of examination-in chief alongwith application below exhibit 36. The matter is fixed before the trial Court on 27th July, 2018. Under such circumstances, I am of the view that interference in the order passed by the learned Judge of the trial Court is required. Hence, I allow this Petition with following order :

ORDER

(i) The order dated 28th August, 2017 passed by the learned Civil Judge, Senior Division, Baramati is hereby set side.

(ii) The affidavit of examination-in-chief of the petitioners /plaintiffs is to be exhibited and if copies of the said affidavit is furnished to the respondents/defendants, then immediately the matter to be fixed for cross-examination of the plaintiffs on 27th July, 2018 or in the next week.

(iii) The cross-examination of the petitioners/plaintiffs is to be conducted in two consecutive dates. The petitioners/plaintiffs are directed to pay costs of Rs.3000/- to the respondents/defendants on 27th July, 2018 in the trial Court.

6. Parties to act upon an authenticated copy of this order.

(MRIDULA BHATKAR, J.)