

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.12407 OF 2019

SHAHAJI RAGHUJI JADHAV THROUGH LRS ARCHANA NITIN CHAVAN
ALIAS ARCHANA SHAHAJI JADHAV AND OTHERS

VERSUS

UNITED INDIA INSURANCE COMPANY LTD THROUGH ITS BRANCH
MANAGER AND OTHERS

...

Advocate for the Petitioners : Shri Gore Ravindra Vitthal a/w Shri
C.V.Bodkhe

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 04th November, 2019

Per Court:

1 The petitioners, who are the original plaintiffs in Special Civil Suit No.301/2017, are aggrieved by the order dated 21.06.2019 passed by the Trial Court by which, the application exhibit 44 filed by the plaintiffs seeking recasting of issues, has been rejected.

2 I have considered the strenuous submissions of the learned advocate for the petitioners and have gone through the nine grounds formulated in the memo of the petition.

3 The Trial Court has considered the pleadings of the parties while framing the issues on 25.10.2018. The plaintiffs have approached the Trial Court contending that defendant nos.2 and 3 had supplied a

defective gas cylinder, which exploded leading to the death of one person. The Trial Court has, therefore, cast the first issue by placing the burden on the plaintiffs to prove that the gas cylinder was defective, had a leakage and that led to death of a person.

4 The petitioners/ plaintiffs preferred exhibit 44 praying that the onus and burden be cast upon defendant nos.2 and 3 to prove that they had supplied the gas cylinder, which was in a perfect condition and that the petitioners had received the said gas cylinder in the same condition.

5 It is well settled law that one who pleads has to prove. The plaintiffs are the claimants and have pleaded that the gas cylinder supplied to the deceased was defective, had a leakage and had exploded. They, therefore, have to prove their pleadings.

6 In view of the above, I do not find that the impugned order could be termed as being perverse or erroneous.

7 This Writ Petition being devoid of merit is, therefore, dismissed.