

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

**9 WRIT PETITION NO.11185 OF 2014**

USHA DATTATRAY PACHPANDE  
VERSUS  
POOJA NITIN WAIKOLE AND OTHERS

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Advocate for Petitioners : Mr. Rane Girish S.  
Advocate for Respondent Nos. 1 and 2: Mr. S.S. Bora  
Advocate for Respondent Nos. 3 and 4: Mr. M.V. Navandar h/f  
Mr. M.N. Navandar

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**CORAM : V. K. JADHAV, J.**  
**DATED : 18<sup>th</sup> NOVEMBER, 2019**

**PER COURT :-**

1. Heard finally with consent at admission stage.
2. Considering the provisions of Section 167 of the Indian Evidence Act, 1872, Section 99 of the Code of Civil Procedure so also Order XLI Rule 27 of C.P.C, there cannot be a new trial for improper admission or rejection of evidence. However, the embargo is there under Section 167 of the Evidence Act itself that if it shall appear to the Court before which such objection is raised that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision.
3. In the instant case, the learned Judge of the trial Court in Paragraph No.6 of the impugned order has specifically observed that the above order can be taken into consideration even after examination of the witness. In view of the same, I

do not find any substance in this writ petition. It is for the trial Court to consider the said evidence, if so required or even the trial Court is always at liberty to discard the said evidence if it appears to be irrelevant. The writ petition is accordingly disposed off.

4. The amount of Rs.10,000/- was directed to be deposited by the petitioner before this Court and he accordingly deposited the said amount. The said amount shall be refunded to the petitioner for which the other side has also no objection. However, the amount of Rs.9000/- shall be transferred to the trial Court and the petitioner herein is entitled to withdraw the said amount upon its transfer to the trial Court. The amount of Rs.1000/- shall be paid to Creche /Day Care Centre run by Advocate Bar Association, High Court, Aurangabad.

**(V. K. JADHAV, J.)**

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