

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.14716 OF 2019

KIRAN MARUTIRAO KSHIRSAGAR
VERSUS
BALAJI DHONDIRAM GAIKWAD AND OTHERS

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Advocate for Petitioner : Shri Kulkarni Krishna K.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: December 09, 2019

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PER COURT :-

1. The petitioner / plaintiff is aggrieved by the order dated 17.10.2019, passed by the trial Court, by which, application Exhibit 101, filed by defendant No.2, in RCS No.262 of 2011 has been allowed and the said defendant has been permitted to lead evidence on her behalf.

2. The contention of the petitioner is that defendant Nos.1 and 2 have filed a common written statement. Defendant No.1 led his evidence. This was followed by examination of one witness on behalf of defendant No.1. Thereafter, defendant No.2 filed her affidavit in lieu of examination-in-chief on 19.9.2018. The said affidavit was granted Exhibit No.99 and she was to be subjected to cross-examination.

3. An application dated 5.10.2018 at Exhibit 95, was filed by the plaintiff contending that defendant No.2 should be prohibited from leading evidence as defendant No.1 has examined himself and one witness. Order XVIII Rule 3A of the CPC was invoked and the trial Court, while allowing the application, vide order dated 6.3.2019, has recorded that, *“In present case, the defendants have not sought permission to examine the witness prior to defendant No.2. Therefore, the evidence of defendant No.2 cannot be taken on record at this juncture.”*

4. The plaintiff's grievance is that once the order was passed below Exhibit 95, the trial Court could not have subsequently allowed application Exhibit 101, thereby permitting defendant No.2 to adduce evidence.

5. I find from the record that neither defendant No.1 nor his witness has stated in their deposition that they were leading oral evidence on behalf of defendants 1 and 2. It was not their case that common oral evidence is being led. So also, the order dated 6.3.2019, below Exhibit 95, does not preclude defendant No.2 from leading evidence until the said defendant seeks permission. The evidence of defendant No.2 was, therefore, not taken on record at that stage. Subsequently, defendant No.2 moved Exhibit 101,

seeking leave to lead evidence as an independent defendant.

6. The learned Advocate for the plaintiff submits that the order dated 6.3.2019 may come in way of defendant No.2 I do not find that the trial Court has concluded that the evidence of defendant No.2 would be closed and she would not be permitted to lead oral evidence.

7. As such, in the interest of justice and in view of appropriate reasons assigned by the trial Court, the impugned order dated 17.10.2019 cannot be branded as being perverse or erroneous.

8. This petition, being devoid of merits is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

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