

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

WRIT PETITION NO.8640 OF 2018

Ramesh Madhavrao Tambe ... Petitioner
Vs.
Shirish Mallikaarjun Dhange & Ors. ... Respondents

.....

Mr. Uday P. Warunjikar for the Petitioner.

.....
CORAM : M. S. KARNIK, J.

DATE : 27th AUGUST, 2019.

P. C.:

1. Heard learned counsel for the petitioner.
2. By this petition the order passed below Exhibit 53 allowing the application below Exhibit 53 is under challenge.
3. The petitioner is the original defendant. The plaintiffs had filed a suit for cancellation of the agreement for sale, possession and alternatively for refund of the amount with interest. The defendant filed a written statement and a counter claim.
4. Mr. Warunjikar firstly invited my attention to the application filed by the plaintiffs under Order XVIII Rule 1 contending that the Trial Court direct the defendant to adduce his

evidence first and begin with the evidence. By an order dated 21.1.2015 this application was allowed and in view of Order XVIII Rule 1 the defendant was directed to begin with evidence as petitioner filed a counter claim. So far as the counter claim is concerned the evidence of the defendant was over.

5. Thereafter the Trial Court considered the application Exhibit 32 which was filed by the defendant that it is the plaintiffs who should lead their evidence. The application came to be allowed and the Trial Court by the order dated 20.7.2017 directed the plaintiffs to lead evidence. It was further directed that later on, defendant will be allowed to lead evidence excluding the evidence concerning counter claim which is already recorded.

6. The plaintiffs filed an application below Exhibit 53 for reviewing the order dated 20.7.2017 passed below Exhibit 32. The Trial Court allowed the application. The Trial Court observed that there was some confusion in respect of the order passed below Exhibit 32 which it failed to read properly. In this view of the matter, the Trial Court by the impugned order directed the defendant to finish his evidence as a whole and then the plaintiffs would open his side.

7. Mr. Warunjikar, learned counsel for the petitioner would submit that there was no reason for the Court to have modified the order dated 20.7.2017 passed below Exhibit 32. Mr. Warunjikar would submit that as the defendant had filed the counter claim, the Trial Court directed the defendant to lead evidence. After leading evidence on the counter claim, later on, by the order passed below Exhibit 32, the Trial Court correctly directed the plaintiffs to lead evidence. The Trial Court had rightly directed the plaintiffs to lead evidence excluding the evidence concerning counter claim. Mr. Warunjikar therefore would submit that the Trial Court was not justified in reviewing the order dated 20.7.2017 passed below Exhibit 32 without there being any error apparent on the face of record.

8. Heard. Having gone through the impugned order, I see no reason to interfere with the order. I find that the Trial Court having realised the confusion in respect of order passed below Exhibit 32 proceeded to pass the impugned order. By order dated 21.01.2015, the Trial Court had directed the defendant to begin with evidence. Later on after the evidence was led by the defendant in their counter claim, the Trial Court

directed the plaintiffs to begin with their evidence and thereafter permitted the defendant to lead evidence. Having realised that the Trial Court had already taken a view vide order dated 21.1.2015 that it is the defendant who should be directed to begin with the evidence, the Trial Court merely maintained the earlier order directing the defendant to lead evidence first. There is no challenge to the order dated 21.01.2015. The Trial Court is proceeding in terms of order dated 21.01.2015. Having realised the confusion, the Trial Court has corrected its order by recording that the Trial Court would proceed in terms of the order dated 21.01.2015.

9. I see no reason to interfere with this order of the Trial Court. Keeping the liberty to the petitioner open to challenge the order dated 21.1.2015, the present Petition is dismissed.

(M. S. KARNIK, J.)