

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

WRIT PETITION NO. 13172 OF 2019

M/s Hardasmal Trading Co. and Anr. ...Petitioners

Versus

Satyanarayan Mulchand Purohit and Ors. ...Respondents

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Mr. Kishor C. Sant, Advocate for Petitioners

Mr. A.J.Patil, Advocate for Respondent Nos. 1 to 4

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 30-09-2021.

ORAL ORDER :

01. The petitioners challenge the order dated 12.07.2019 passed by Civil Judge, Senior Division Jalgaon in R.C.S. No. 788/2012 below Exhibit 70.

02. The petitioners original defendant Nos. 1 and 2 in R.C.S. No. 788/2012 filed application Exh. 70 claiming that at the time of filing affidavit in lieu of evidence, the plaintiff respondent has incorporated many averments which are beyond the pleadings. Therefore, all the evidence filed by the plaintiff be discarded being beyond the pleadings.

The said application is opposed by the

respondent plaintiffs contending that if the evidence led in chief by the plaintiffs is beyond the pleadings, same can be pointed out by the plaintiffs at the time of cross-examination. The plaintiffs, therefore, contended that the application be dismissed.

03. The learned trial Court disposed of the application by making certain observations. This order is impugned in the present petition. Heard learned Advocate for the petitioners and the learned Advocate for the respondents.

04. The learned Advocate for the petitioners submitted that the trial Court has failed to consider that the plaintiff has given evidence beyond his pleadings which is not permissible and the said evidence needs to be discarded by the Court at this stage itself. Further submission is that even the plaintiff did not dispute that the evidence is beyond the pleadings. He further submitted that the trial Court erred in observing that the defendants can cross-examine the witness of the plaintiffs on the evidence which is admissible. It is not certain as to which evidence the Court will treat as admissible and which will be treated as in-admissible, he, therefore,

submitted that a confusion is created by the impugned order. Therefore, the impugned order is liable to be quashed and set aside.

05. Learned Advocate for the respondent on the other hand supported the impugned order and contended that the impugned order is rightly passed by the trial Court and petitioners have not made out a case to interfere in the same.

06. Learned trial Court has observed in the impugned order that the evidence which is beyond pleadings will be automatically discarded and the same is not admissible at all. The Court directed the defendants to take cross-examination only in respect of evidence which is admissible. It is further observed that the evidence led which is beyond pleadings is automatically discarded.

07. The language used by the trial Court while passing the impugned order is plain, clear and simple and the approach of the trial Court is in accordance with the settled legal position that the evidence beyond the pleadings is not admissible and need not be considered. In the facts of the present case, the trial Court was

right in directing the defendants to cross-examine the witness of the plaintiff only in respect of evidence which is admissible. It is made clear by the trial Court that the evidence which is beyond pleadings will be discarded as not admissible. The approach of the trial Court is in consonance with the settled legal position. No fault is found with the well reasoned order passed by the trial Court. This is not a fit case to exercise the extraordinary writ jurisdiction. Writ petition being meritless is dismissed.

08. Considering the fact that the suit is of the year 2012, its hearing is expedited. The trial Court shall decide the suit within 6 months from the date of receipt of this order.

[NITIN B. SURYAWANSHI]

JUDGE

Dahibhate/-