

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11281OF 2021

Mohd. Sajid s/o Modh. Dawood
Age- 47 years, Occ- Business
R/o. Chamba Chouk, Metro Tower,
Aurangabad, Tq. & Dist. Aurangabad.

PETITIONER
[Orig. Plaintiff]

VERSUS

Leelabai Shantilal Muthiyan
Age- 71 years, Occ- Household,
R/o. 119, Samarth Nagar, Aurangabad
Tq & Dist. Aurangabad.

RESPONDENT

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Mr. Punit S. Mehta, Advocate for the petitioner.
Mr. Pramod F. Patni, Advocate for Respondent.

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[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON: 7th JULY, 2022
PRONOUNCED ON- 26th JULY, 2022

ORDER :

1. The challenge in this petition is to the order dated 18.08.2021, below Exhibit-66 in Special Civil Suit No. 182/2017, passed by the learned 9th Joint Civil Judge, Senior Division, Aurangabad, thereby rejecting the application filed by the petitioner seeking direction under Order XVIII Rule 3 of Code of Civil Procedure.

2. The petitioner/original plaintiff filed suit for specific performance of contract and injunction. The suit was resisted by the respondent/defendant by filing written statement. The plaintiff examined himself and his witness Mohd. Imran Paryani (PW2). Thereafter, defendant led her evidence. After closure of evidence of defendant, the plaintiff again examined PW2 for giving evidence in rebuttal to issue No. 3 and 4. After examining PW2, the plaintiff closed his evidence by filing purshis at Exhibit-47. Thereafter, present application Exhibit-66 is filed by the plaintiff seeking direction to the defendant to advance arguments first. Said application is rejected by the Trial Court. Hence, the present petition.

3. Heard the learned advocate for the petitioner and learned advocate for the respondent.

4. Indisputably, the petitioner/plaintiff has led his evidence and reserved his right to adduce evidence in rebuttal to issue no. 3, by filing purshis at Exhibit-35. Thereafter, defendant has led her evidence and after she closed her evidence, plaintiff again examined PW2 in rebuttal to issue no. 3 and 4 and then has closed his evidence. Admittedly, defendant has not

thereafter led any evidence. Since the plaintiff has closed his evidence last he has to advance arguments first in terms of Order XVIII Rule 3. The plaintiff will have the opportunity to reply the arguments advanced by the defendant.

5. In the light of aforesaid facts, application filed by the petitioner/plaintiff was misconceived and the same is rightly rejected by the Trial Court. The Trial Court has rightly appreciated the facts and has correctly applied the provisions of Order XVIII Rule 3 and ratio in *P.T. Anklesaria and others Vs. Union of India and others* [1974, Mh.L.J.891], while rejecting the application of the petitioner.

6. In *P.T. Anklesaria* (supra) relied upon by the petitioner, the defendant had led his evidence last and therefore, it was held that he is required to address the Court first. In the case in hand, admittedly, the petitioner/plaintiff has led his evidence last and therefore, he is required to address the Court first.

7. The Trial Court has passed a well reasoned order and there is no illegality or perversity in the impugned order. No case

is made out by the petitioner to warrant interference in the extraordinary writ jurisdiction. The writ petition is therefore dismissed. No costs.

[NITIN B. SURYAWANSHI, J.]