

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 6862/2022

(Devanand Balpande and another **Vs.** Sau Latabai Ashtankar and others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr K.J. Topale, counsel for petitioners.

CORAM : VINAY JOSHI, J.

DATED : 20/12/2022.

1. Heard.
2. The petitioners are the defendants in Regular Civil Suit No.24/2017 filed by the respondents seeking mandatory injunction.
3. The respondents (plaintiffs) have led evidence of four witnesses and thereafter the learned trial Court has passed an order on Exhibit No.1 dated 23/09/2021, by which the plaintiffs evidence was closed. In consequence, the petitioners (defendants) have filed the Pursis, informing that they do not wish to lead the evidence.
4. At this juncture, the respondents/plaintiffs have filed applications for setting aside the order of evidence close, permission to adduce additional evidence and produce certain documents. The learned trial Court has allowed all the applications, which is impugned herein.
5. The learned counsel appearing for the petitioners have challenged these orders by contending that when the matter was fixed for arguments, at such a beleated stage, the plaintiffs have sought permission

to adduce the evidence and therefore, the learned trial Court erred in allowing those applications.

6. The petitioners' learned counsel has submitted that during the cross-examination, the plaintiffs gave certain admissions and for that reason, the plaintiffs are seeking to adduce additional evidence which cannot be permitted. It reveals that, the endeavor of plaintiffs is to produce documentary evidence and having regard the said aspect, it is for the learned trial Court to consider the admissions at the time of final hearing, but for that reason, the plaintiffs cannot be prevented to lead additional evidence.

7. The contention of the petitioners would have accepted if after closure of the plaintiffs' evidence. The defendants have led the evidence. However, the fact is that after closure of plaintiffs' evidence, virtually there is no progress as defendants have not led any evidence. The learned trial Court has thought it fit to give an opportunity to plaintiffs to lead the evidence to substantiate their claim. It is not the case that the plaintiffs have closed their evidence and after the defendants evidence seeking permission to lead the evidence, so as to fill up the gap. It is true that, the plaintiffs ought to have diligent, however, their right cannot be foreclosed without substantial reasons.

In view of the fact that, there appears to be no error. Hence, the writ petition stands **dismissed**.