



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

WRIT PETITION NO.4766 OF 2023

Shri Gaurishankarji S/o Balchandji Lohiya (dead) through LR's. **.Vs.** Ashokkumar S/o
Balchandji Lohiya and others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri R.L. Khapre, Senior Adv. a/b Shri V.A. Lohia, Adv. for petitioners.

Shri Chetan Lohiya, Adv. a/w Shri Nishant Patil, Adv. for respondent No.1.

CORAM : ANIL S. KILOR, J.

DATED : 15/01/2024

1. Heard.
2. The order below Exh.153 dated 15.05.2023 passed in Special Civil Suit No.115 of 2018 by the 8th Jt. Civil Judge, Senior Division, Akola, rejecting the application moved by the defendant Nos.1 (a) and 1(b) for expunging some parts of the evidence affidavit (Exh.151) on the ground that the same are not reflected in the pleading, is under challenge in this writ petition.
3. The only objection raised by Shri R.L. Khapre, learned Senior Advocate to the impugned order is that, despite the repeated observation made by the learned trial Court that if a portion of the affidavit is found to be not relevant or if it is found that the portion has no foundation in the pleading, the Court can always discard it while deciding the suit, the application was rejected.

4. The learned trial Court has observed that, the objection of defendant shall be recorded prior to or during the cross-examination and the same shall be considered at the time of final adjudication. However, despite the same, at the conclusion, the application held to be rejected. Accordingly, I am of the opinion that, the ends of justice will be sub-served by modifying the operative part of the order by observing that, the application is “disposed of”. Accordingly, the impugned order is modified.

5. It is needless to mention that while deciding the objection at the time of final adjudication, the learned trial Court shall not influence by any of the observation made in the impugned order.

6. The learned trial Court is directed to expedite the suit and it will be decided at the earliest.

JUDGE