

(2017) 05 BOM CK 0130
In the Bombay High Court
Case No : 463 of 2014

M/s Minescape Minerals Pvt. Ltd.

APPELLANT

Vs

Mr. Sudhir Murari Sawardekar, s/o late Murari Vithal Sinai
Sanvordencar, & Ors.

RESPONDENT

Date of Decision : 02-05-2017

Acts Referred:

[Code of Civil Procedure, 1908](#), [Order 18 Rule 3](#)

Citation : (2017) 05 BOM CK 0130

Hon'ble Judges : M. S. Sonak

Bench : SINGLE BENCH

Advocate : Rohan Dessai, G. Tamba

Judgement

1. Upon a query as to whether, I was in any manner concerned with this matter, both the learned Counsel for the parties state that I was not, and therefore, they have no objection for my taking up this petition.

2. Accordingly, Rule. With the consent and at the request of the learned Counsel for the parties, Rule is made returnable forthwith. Mr. Tamba, learned Counsel, waives notice for the respondents.

3. Mr. Rohan Desai, the learned Counsel for the petitioner submits that the learned Trial Court, has perhaps misinterpreted the request made by the petitioner-plaintiff in the application dated 09.08.2013, to mean that the petitioner will not step into the witness box, before the respondents-defendants step into the witness box and complete their evidence. Mr. Rohan Desai, submits that the petitioner in terms of Order XVIII, Rule 3 of CPC had only applied for leave to lead evidence in rebuttal on the issues in respect of which, the burden has been cast upon the respondents-defendants. In particular, he points out that in issue nos. 15 to 24, the burden has been cast upon the respondentsdefendants and it is in respect of these issues, that the petitioner seeks leave to lead evidence in rebuttal. However, he submits that in respect of

issue nos. 1 to 14, where the burden has been cast upon the petitioner-plaintiff, it is the petitioner-plaintiff who will lead evidence to begin with.

4. Mr. Tamba, the learned Counsel for the respondents submits that provision of Order XVIII, Rule 3 of CPC have to be followed. The petitioner cannot avoid leading evidence in the first instance, at least, insofar as the issues, where the burden has been cast upon the petitioner-plaintiff. Insofar as the leading of evidence in rebuttal is concerned, Mr. Tamba states that the same will have to be governed by the provisions of law as contained under Order XVIII, Rule 3 of CPC.

5. Considering the facts and upon hearing both the learned Counsel for the parties, all that needs to be done is a clarification that it will be for the petitioner-plaintiff to lead evidence to begin with insofar as issue nos. 1 to 14 are concerned, since, the burden of proving these issues has been cast upon the petitioner-plaintiff. Naturally, insofar as such issues are concerned, the respondentsdefendants will be entitled to cross examine the petitioner-plaintiff and their witness. Thereafter, it will be for the respondentsdefendants to lead evidence on issue nos. 15 to 24 where, the burden has been cast upon the respondents-defendants. Naturally, the petitioner-plaintiff will be entitled to cross examine the respondents-defendants and their witness. In addition to this, the petitioner-plaintiff will have leave to lead evidence in rebuttal, insofar as issue nos. 15 to 24 are concerned. This is necessary as in this case, the respondents-defendants have raised a counter claim and issue nos. 15 to 24 as pointed by Mr. Tamba are issues raised mainly in the counter claim.

6. The impugned order, to the extent the same is inconsistent with the clarification, as aforesaid, is therefore modified. Rather, the aforesaid clarification shall substitute the direction in the impugned order. The application made by the petitioner under Order XVIII, Rule 3 of CPC is allowed to the aforesaid extent.

7. Rule is disposed of in the aforesaid terms. There shall be no order as to costs. All concerned to act on the basis of the authenticated copy of the order.