

MHSN150009732020



(Sambhaji Kisan Salunkhe-4
V/s.
Nilesh Rajaram Mane-90)

(CNR No.:-MHSN15-000973-2020)

ORDER BELOW EXHIBIT 85 IN
REGULAR CIVIL SUIT No.62/2020
{OLD REGULAR CIVIL SUIT No.108/2018}

1. This is an application filed by defendant No.85 vide Order 6 Rule 17 of Code of Civil Procedure to delete the admissions made in the *written-statement* and to delete the name of defendant No.84 from *written-statement*.
2. Perused application and say of plaintiffs. Both plaintiffs and defendant No.85 found absent when called repeatedly, thus, taken for order on merit.
3. According to defendant No.85, when he appears before the Court in consequence of the suit summons on behalf of Government, he met advocate of plaintiffs. The advocate of plaintiffs *Mr. B. M. Patil* instead of giving proper advice to appoint an advocate, mis-leaded him and got filed *written-statement* of admission on his behalf and on behalf of defendant No.84. Therefore, defendant No.85 sought to delete the name of defendant No.84 in the *written-statement Exhibit 49* and to delete the admissions made in

the *written-statement*, as proposed and mentioned in paragraph No.3/A, 3/B and 3/C of the application.

4. Plaintiffs opposed the application vide his reply and vehemently contended that, the application is false and without any proof. The *written-statement Exhibit 49* has been filed by defendant No.85 in his own handwriting and admitted the suit claim. Thus, without proving the allegations against the senior advocate *Mr. Patil*, the admission cannot be permitted to be withdrawn. There is collusion between defendants and thus filed the present application.

5. Relying upon the decision of Hon'ble Supreme Court in case of *United Bank of India V/s. Naresh Kumar and Others (1996)6 SCC 660* and decision of Hon'ble Bombay High Court Bench At Goa in case of *Escolastico Mezareello V/s. Dr. Stacey Moraes 2012(6) AIR Bom R 324* learned advocate for plaintiff sought to reject the application.

6. In view of the rival claim, following points are arises for my consideration. I have recorded my findings thereon for the reasons recorded thereunder.

Sr. No.	Points	Findings
1.	Whether proposed amendment is essential and can defendant No.85 be permitted to withdrawn the admissions by way of amendment ?	No.
2.	What order ?	As per final order.

R E A S O N S

AS TO POINT Nos.1 & 2 :-

7. Undisputedly, the allegations made against the advocate are not proved by any means. The allegations being very serious, mere affidavit is not sufficient. No complaint seen have been made against the advocate before appropriate authority for alleged act of mis-leading and fraud. Defendant No.85 seen filed *written-statement* for himself and for defendant No.84 in his own handwriting. Defendant No.85 being a public servant must know the Court procedure, atleast to know what he is giving in writing and filing before the Court. He cannot claim that, he did not understand the meaning of the words pleaded in the *written-statement* and did not understand its consequences. Mere pleadings of ignorance of law and procedure, defendant cannot be permitted to withdraw the pleadings already made and filed before the Court. The pleadings made by defendant No.85 on behalf of defendant No.84 are equally binding upon defendant No.84, unless otherwise proved. Thus, the proposed amendment appears not essential, nor permissible under law.

8. Therefore, the proposed amendment cannot be allowed for mere asking. The admissions once made in pleadings cannot be allowed to be withdrawn, but can be explained. Thus, the application is not tenable and have to be rejected. Resultantly, I record the answer to points under consideration and following order is passed.

ORDER

1. The application is rejected.
2. Costs in cause.

Vita.

(Sudhir N. Shinde)

Date: 06/02/2023.

Jt. Civil Judge Senior Division, Vita.

I affirm that, the contents of this P.D.F. file Judgment/Order are same, word to word, as per the original Judgment/Order.

Name of the Stenographer : S. P. Pethkar.

Court : Civil Judge Senior Division, Vita.

Judgment/Order signed by

the Presiding Officer on : 06/02/2023.

Judgment/Order uploaded on : 08/02/2023.