

MHCO120000402008



IN THE COURT OF HON'BLE JUDGE CO-OPERATIVE
COURT NO.2 PUNE AT. PUNE

Dispute No.130/2008

Rupee Co-operative Bank Ltd.

----- Disputant

V/s.

M/s. Movilex Irrigation Ltd., & Others

-----Opponents

ORDER BELOW EXH.101

(Dictated and Pronounced on 27/06/2024)

1] This is an application filed by the disputant for withdrawal of affidavit in chief of its witness namely Shri. Balkrishna Bhagwan Darwade and for permission to file the affidavit in chief of new witness Shri. Sanjay Digambar Savant, mainly on the ground that, the disputant bank has filed affidavit in chief of its witness namely Shri. Balkrishna Bhagwan Darwade at Exh-65 and Ld. Adv. For the opponent had started cross examination of the said witness. During the pendency of this dispute, the said witness namely Shri. Balkrishna Bhagwan Darwade has taken voluntary retirement from the service of disputant bank. The disputant bank requested the said witness to appear in the court for cross examination but said witness has not given any response to the request of disputant bank. The witness summons is also served through this court upon the witness then, also the witness is not willing to attend the court. To prove the claim of the disputant bank, disputant bank wants to examine Shri. Sanjay Digambar Savant as its witness therefore, disputant bank prays for permission for withdrawal of affidavit in chief of Shri. Balkrishna Bhagwan Darwade and permission to file the affidavit in chief of Shri. Sanjay Digambar Savant.

2] This application is strongly objected by the opponent No.1, 2, 3 & 5 by filing their reply which is at Exh-102. The main objection of opponent is that, the disputant bank has not filed any documents in support of this application. Disputant bank should not allowed the voluntarily retirement to the witness Shri. Balkrishna Bhagwan Darwade till completion of cross examination. These opponents prays to reject the application.

3] Heard Ld. Adv. For the disputant bank at length.

4] Heard Ld. Adv. For opponents at length.

5] Ld. Adv. For the disputant failed to point out any of the provision of M. C. S. Act, 1960, Code Of Civil Procedure, 1908 or the provisions of Indian Evidence Act, which permits the withdrawal of examination in chief of the witness which is already taken on record. It is fact that, witness Shri. Balkrishna Bhagwan Darwade is not available for recording further cross examination. Hence, the order is passed on Exh-65 that, his evidence cannot be read against the opponens. The prayer of withdrawal of affidavit in chief of Shri. Balkrishna Bhagwan Darwade is specifically rejected.

6] As to the point of permission to file affidavit in chief of witness Shri. Sanjay Digambar Savant is concern, the disputant bank is always at liberty to file his examination in chief has witness No.2 of the disputant bank.

7] In view of above discussion, I proceed to pass following order.

ORDER

1] The examination in chief of witness Shri. Balkrishna Bhagwan Darwade Exh-65 shall not be read as against opponents as this witness is not available for cross examination.

2] Disputant bank is always at liberty to file the affidavit in chief of Shri. Sanjay Digambar Savant or any other person as his second witness to prove the claim in accordance with the law.

3] In view of above order application Exh-101 is disposed off.

4] No order as to cost.

Date:27/06/2024

Place: Pune

(A.S.Wanve)

Judge,

Co-operative Court No.2,Pune