

MHAU060007032009



ORDER BELOW EXH. 91 IN RCS NO.65/2009
CNR : MHAU060007032009

1. The defendant has filed this application for seeking permission in view of order dated 25.07.2019 passed by the Hon'ble High Court to explain and rectify the mistake, crept in line no.10 of Para No.4 in the affidavit in examination in chief at Exh.74 about the direction 'northern' and state it as 'southern'.

2. It is contended that the dispute erupted about the Exh.74 and 77 sow the culmination into the litigation before the Hon'ble High court Bench At Aurangabad. That in the said writ petition no.6779/2009 and Writ Petition No.1892/2017 the Hon'ble High Court passed order on 25.07.2019. On the page no.8 in para no.15 and 7 the Hon'ble High Court bestowed liberty to the defendant to explain and rectify mistake that appeared in line no.10 of para no.4 of Exh.74. From para no.5 of the said order it is manifest that the Hon'ble High Court has granted liberty to the defendant to rectify the mistake mentioned supra as well as to lead further oral examination in chief. That the sake of avoiding confusion and wastage of time the defendant may kindly be allowed to lead further oral examination in chief to the effect rectifying the said mistake.

3. The plaintiffs filed their say below Exh.92 and strongly objected the application. The plaintiffs contended that the application is misconceived and not tenable at law. The defendant has not come with clean hands before the court. The defendant has misinterpreted the order

passed by Hon'ble High Court. The Hon'ble High Court has not granted any permission to the defendant to rectify the mistakes that appeared in line no.10 of para no.4 of Exh.74 and from para no.5 to the end as a alleged.

4. It is contended that the second affidavit of examination in chief filed by defendant has been discarded by the Hon'ble High Court, which finds clear place in the order passed on 25.07.2019. The defendant is making false baseless allegations and has never come with clean hands before the court. The defendant is not at all entitled for the relief prayed in the application. Hence, prayed to reject the application.

5. Perused the application, say and record. Heard learned adv. R. H. Siddiqui for defendant and Adv. P. K. Nikam for the plaintiff.

6. The suit is filed for permanent injunction to restrained the defendant from causing obstruction to the possession of the plaintiff on the suit property. The plaintiffs have concluded their evidence on 15.10.2015. Thereafter, defendant has filed his affidavit of examination in chief below Exh.74. But he subsequently filed one pursis below Exh.77 stating that, in the affidavit of examination in chief dated 14.07.2016 there was mistake in para no.4 line no.10 in the direction which is mentioned as 'northern' instead of 'southern', therefore, he has filed another affidavit of examination in chief below Exh.78 by making said correction.

7. Thereafter, the plaintiff has taken objection to the said affidavit filed below Exh. 78 by filing application below Exh. 81. The said application below Exh. 81 came to be rejected on 05.01.2016. Being

aggrieved by the said order the plaintiff has filed writ petition (W.P.) no.1892/2017 in the Hon'ble High Court of Judicature At Bombay Bench At Aurangabad. The Hon'ble High Court partly allowed the said W.P. no.1892/2017 on 25.07.2019 and the impugned order dated 5.01.2016 is quashed and set aside and Exh.81 stands disposed off. It is necessary to mentioned the paragraph no.7 of the order of Hon'ble High Court.

7. In view of the above, the second petition No.1892/2017 is partly allowed. The impugned order dated 05/01/2016 is quashed and set aside and Exh.81 stands disposed off. Needless to state, the sole defendant would be at liberty to step into the witness box and continue the recording of his examination in chief. His affidavit earlier tendered to the Court, which is now a part of the record, shall be read along with his further oral examination in chief and the plaintiff would be at liberty to cross examine the defendant on the affidavit as well as the oral examination in chief recorded before the Court. The second affidavit filed by the defendant shall be discarded.

8. After gone through the above order it reveals that the Hon'ble High Court in clear terms discarded the second affidavit of examination in chief of the defendant filed below Exh.78. But at the same time the Hon'ble High Court given liberty to the defendant to step into witness box and continue the recording of his examination in chief. It clearly shows that the Hon'ble High Court has given opportunity to record further examination in chief by stepping in to witness box which will be read along with affidavit of examination in chief filed below Exh.74. It is nowhere mentioned that, the defendant is permitted to filed other affidavit of examination in chief.

9. The learned advocate for the defendant much harp on the point that the Hon'ble High Court has bestowed liberty to the defendant to explain and rectify the mistake that appeared in the line No. 10 para No.4 of the Exh.74.

10. On the contrary the learned advocate for the plaintiffs submitted that, the Hon'ble High Court granted liberty only to step in to witness box and record further chief. Second affidavit filed below Exh.78 is already discarded. The Hon'ble High Court not allowed to correct the mistake in Exh.74.

11. I have gone through the above submissions. The Hon'ble High Court in the order of writ petition after para no.6 reiterated the observations made in other citations, in which circumstances that when the party is permitted to file fresh or additional affidavit of examination in chief are mentioned. But this is not the situation in the present case. The defendant wants to correct his mistake in the affidavit filed in lieu of examination in chief which is not permissible by law. Therefore, as per observations made in the para no.7 of the order of Hon'ble High Court, the subsequent affidavit of examination in chief filed below Exh.78 is discarded by the Hon'ble High Court and defendant is permitted only to step in to witness box for recording further oral examination in chief. But the defendant in stead of stepping into witness box again filed this application to lead further oral examination in chief particularly to the effect of rectifying the said mistake about the word Northern and state it as Southern.

12. In the order of W.P. Hon'ble High Court already granted

liberty to the defendant to step in to witness box and record further examination in chief. Therefore, there is no need to grant specific permission about it. But defendant seeking permission to lead further examination in chief to the effect of rectifying the mistake in the affidavit below Exh.74. To this I would like to mention that the defendant may state in consonance with his pleadings or give any explanation in respect of his pleadings and the plaintiff may cross examine him. This Court cannot grant any specific permission to correct any mistake occurred in the affidavit of examination in chief.

13. Hence, in the light of above discussion and in view of the order of Hon'ble High Court I passed following order.

ORDER

1. The application Exh.91 is partly allowed.
2. The defendant may step in to witness box for recording further examination in chief as permitted by Hon'ble High Court in W.P. No.1892/2017.
3. No order as to Costs.
(Pronounce in open Court)

Sd/-

Date : 21.10.2021

(P. M. Kose)
Jt. Civil Judge J.D., Kannad

CERTIFICATE

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

Name of the Stenographer : R. S. Takalkar

Court : P.M.Kolse.
Jt. C.J.J.D. & J.M.F.C, Kannad.

Date : 21.10.2021.

Order signed by the
presiding officer on : 21.10.2021.

Order uploaded on : 21.10.2021.

Order is digitally signed on : 21.10.2021.