



Regular Civil Appeal No. 42/2014
CNR MHBU010004892014
Gulabrao Motiram Chinchole
-Vrs-
Tejrao Tukaram Pawar

Order below Exh. 23
(Passed on 8.1.2020)

- 1] This is application for affording the appellant opportunity to tender evidence as per the order of Hon'ble High Court, Nagpur Bench, Nagpur in Writ Petition no. 4425 of 2003.
- 2] Perused the application and say. Heard learned advocate Mr. S.P. Sawle -junior of learned advocate Mr. N.S. Sawle for appellant and learned advocate Mr. G.V. Rangnath for respondent.
- 3] In Writ Petition no. 4425/2003, Hon'ble High Court observed *“The respondent-plaintiff should, however, be granted an opportunity to tender evidence on the amended pleadings, if required, as the amendment application was filed after the evidence of the plaintiff was closed”*.
- 4] The wordings in the order of Hon'ble High Court clearly show that if required, opportunity should be granted. No doubt, the evidence of the plaintiff was already closed prior to the order of Hon'ble High Court. It reveals from the original record that evidence affidavit of defendant was filed on 25.11.2013. His further chief on oath was completed on 6.12.2013. Prior to the filing of evidence affidavit or completing the chief examination

on oath, no any oral or written request was made by the plaintiff for allowing him to adduce evidence on amended written statement. The word “if required” was denoting to the plaintiff and therefore, if he had wanted to adduce his evidence on the amended written statement, he would have filed application in that regard. No such application was filed by plaintiff. Defendant was cross-examined by plaintiff's advocate on 23.1.2014. After that, the evidence of defendant was closed and judgment delivered on 28.2.2014. Even, it is not pointed out that prior to passing of judgment, any oral or written prayer was made by the plaintiff for giving the opportunity. These facts clearly show that from the point of view of plaintiff, evidence on the amended pleadings was not required therefore, no request was made. In such circumstances, there was no need for the trial court to give the opportunity. Hence, it cannot be said that opportunity was denied to the plaintiff in view of the order of Hon'ble High Court. Even in the grounds of appeal, there is no ground about this application. The application came to be filed at a stage of argument, which shows that it is only for prolonging the matter. Hence, having no substance in the application, it is rejected.

Buldana.
Date : 8.1.2020

(Mahendra K. Mahajan)
Principal District Judge, Buldana.