Order Below Ex.51.
(Passed on 31.07.2019)

Perused the application and say. Heard both sides. Advocate for the plaintiffs relied on ***Hemendra Rasiklal Ghia -vs- Subodh Mody, 2008(6) Mh.L.J. 886***.

2] Advocate for the defendant Shri. N.C. Wagh submitted that the plaintiff has filed the affidavit by way of examination-in-chief dated 12/06/2019 prior to the decision of Hon'ble Bombay High Court Nagpur Bench as to recast of issues. He submitted that in the affidavit of examination-in-chief para no. 29, 30, 31,32, 33, 37, 42, 45 are beyond the pleadings. The plaintiffs have adduced the evidence beyond the pleadings and which is liable to be struck down. Therefore, he submitted to allow this application and the entire evidence affidavit be struck down.

3] Advocate for the plaintiffs Shri. Arun Patil strongly opposed this application by filing the reply at Ex. 52. He submitted that as per Order 6 Rule 2 of the C.P.C., the pleadings are required to be concise and the evidence is not required to be pleaded. He submitted that the full bench of Hon'ble Bombay High Court in the case of *Hemendra Ghia* cited supra has resolved the controversy. He submitted that the entire evidence affidavit cannot be struck down but the objection of the defendant can be considered at the stage of final hearing.

4] I consider submissions of both advocates. To decide this application, the decision of full bench of Hon'ble High Court in *Hemendra Ghia's* case cited supra needs to be considered. Hon'ble High Court has

framed the question as to which stage the objection to the admissibility or relevancy of evidence contained in the affidavit of evidence filed under Order 18 Rule 4 of the C.P.C. should be considered and decided by the Court. Hon'ble Bombay High Court has held in para no. 90 which is reproduced as under.

> *So far as Question-B relating to the stage at which objection to the admissibility or relevancy of evidence contained in the affidavit of evidence filed under Order XVIII, Rule 4 of Civil Procedure Code is no more res integra in view of the three Judge Bench judgment of the Apex Court in the case of Ameer Trading Corpn. Ltd. (supra), wherein the Court rules as under :*
>
> *".....If any objection is taken to any statement made in the affidavit, as for example, that a statement has been made beyond the pleadings, such an objection can always be taken before the Court in writing and in any event, the attention of the witness can always be drawn while cross-examining him. The defendant would not be prejudiced in any manner whatsoever if the examination-in-chief is taken on an affidavit and in the event he desires to cross-examine the said witness he would be permitted to do so in the open Court...."*

5] In view of the legal position laid down in *Hemendra Ghia's* case cited supra, the objection is to be taken in writing and the attention of the witness should be drawn while cross-examining him. Indeed, the defendant has made objection in respect of para no. 29 to 33, 37, 42 and 45 of the evidence affidavit. In the course of argument, advocate for plaintiffs has drawn my attention to the pleadings. He submitted that the

evidence adduced in the above paragraphs are in consonance with the pleadings. Per contra, advocate for defendant submitted that the evidence adduced in above paragraphs are beyond pleadings. Be it that may be, the defendant has brought on record the objection in respect of the above paragraphs by filing this application. But it has to be brought by way of separate pursis on the record. These objections has to be made in writing and to be filed on record. And no doubt these objections will be decided at the later stage and before the pronouncement of judgment. Therefore, in view of above discussion and legal position laid down in the case of *Hemendra Ghia* cited supra, I think this application is not tenable. But at the same time, the defendant is at liberty to put his objection in writing on the record and that will be considered in later stage and before the pronouncement of judgment. Therefore, I pass following order.

Order

1] The application is rejected.

2] The defendant is at liberty to put on record the objections in writing forthwith.

Sd/-
(V. V. Kulkarni)
Civil Judge Junior Division
Shegaon, Dist. Buldana.

Place : Shegaon.
Date : 31/07/2019.

CERTIFICATE

I affirm that the contents of this PDF file are same word for words as per original.
Name of Steno : A.I. Shastri.
Name of Court : CJJD. Shegaon.
Upload date : 02.08.2019.