

**ORDER BELOW EXH 39**

01. The present application is filed by the Opponent No.2 under order 1 Rule 10 of Code of Civil Procedure for transposing him as plaintiff.

02. It is contended by him that, he has shown as borrower for loan transaction of Rs. 2,50,000/- dated 04/02/2014. But he has never received the loan amount. The Disputant is guarantor and has filed the present dispute for declaration and injunction. He sought declaration that the loan transaction entered in the name of Opponent No.2 on 04/02/2014 is illegal. He also sought injunction for restraining the Opponent No.1 from recovering loan amount. It is further contended by Opponent No.2 that the real dispute is between him and Opponent No.1. If the permission for transposition is granted then he can lead the evidence against the Opponent No.1 and he can also cross examine the Opponent No.1. Hence he prayed for transposing him as Disputant.

03. The Disputant has filed his say and given no objection for transposition of Opponent No.2 as Disputant.

04. The Opponent No. 1 and 3 failed to file the say. Hence application proceeded without their say.

05. Heard both. Perused Record. The present dispute is filed by the disputant on the ground that he has signed the loan documents as guarantor of Opponent No.2 on 04/02/2014. He enquired with Opponent No.2 regarding loan. The Opponent No.2 has told him that the Opponent No.1 has

not disburse him the loan. Thereafter, in November 2017, he received the notice from D.D.R. in Recovery application No. 101/245/17-18. At that time he came to know that his bogus signature was endorsed on loan documents. It is further contended that, the loan documents does not bears their signature. It is also contended that, the Opponent No.1 has obtained the signature on blank documents and misused the same. There are various irregularities in loan transaction and documents. It is further contended by him that, the officers of Opponent No.1 were indulged in money lending business. They use to obtain the signature on blank papers and misuse them for their business. They use to visit the house of Opponent No.2 in December 2013 for recovery of money lend by them. The Opponent No.2 has fed up with their harrasment and left the house in March 2014. He never returned. On the basis of these averments and causes the disputant sought the declaration and injuction.

06. On perusal of record it appear that the Opponent No.2 is appeared in present proceeding after public notice and filed present application without filling his written statement.

07. As per Order 23 Rule 1A, there is precondition of withdrawing or abandoning the suit by plaintiff. Thereafter on application for transposition of defendant as plaintiff the court may having due regard to question whether the applicant has substantial question to be decided as against any defendant, decide the said application. But before filling of said application the plaintiff must have withdrawn or abandoned the suit as per Order 23 Rule 1. In present matter the Disputant has not withdrawn or abandoned the dispute as per Order 23 Rule 1. Hence the application firstly fails on precondition of Order 23 Rule 1A.

08. As per Order 1 Rule 10 provides that the court, if the suit is instituted in wrong name through bonafide mistake and for determination of real matter in dispute, may order substitution or addition of plaintiff. There is no pleading that the dispute is instituted in wrong name. There is no such ingredient incorporated in pleadings or such fact not appeared from record.

09. As the Opponent No.2 has not filed his written statement, hence the controversy and cause of his action and real matter can not be ascertained. The matter being devoid of merit and not in accordance with the provisions of law deserve to be rejected.

**:- ORDER :-**

1. The application stands rejected.
2. No order as to cost.

**Date : 30<sup>th</sup> Sept, 2019**

**(A.B. Katte)  
Judge**

**Co-operative Court No.1, Sangli**