

Common order below Exh-31 & 32

1- These applications are filed to direct the plaintiff to file affidavit of evidence in Marathi language and reject the affidavit of evidence filed in English by plaintiff.

2- In brief it is the contention of defendant that, the plaintiff has filed affidavit of evidence in English but has not filed the affidavit in Marathi which requires double recording of evidence as the decree passed in the suit is appeal-able. U/sec. 137 of Code of Civil Procedure the language of the subordinate court is subject to declaration by the State Government and the State of Maharashtra by Notification in official gazette dated 21-07-1998 in part IV-A issued direction that the Marathi language shall be used by subordinate court except by ten items attached to the schedule of Notification.

It is submitted that, under Order XVIII Rule 4 of C.P.C. the affidavit is required to be filed for recording of the evidence and under Order XVIII Rule 5(a) of C.P.C. the evidence is required to be recorded in the language of court i.e. Marathi or is required to be interpreted under R-6 of O-XVIII of C.P.C. as for the purpose of cross examination the defendant will be required to ask question in Marathi which is the

language of court. The permission under Order XVIII Rule 9 of C.P.C. is not befitting as per the direction of Hon'ble High Court and the State of Maharashtra. The plaintiff may appoint interpreter for himself to understand the Marathi language or to take assistance of his appointed Counsel. It is also submitted that, the affidavit of evidence in English filed by plaintiff is not as per the standard prescribed under the law and the Civil Manual Chapter-XXVI Rule 506 to 515. Therefore, it is prayed that, the plaintiff be directed to file the affidavit of evidence in Marathi and the affidavit of evidence in English be rejected.

3- To these applications plaintiff filed say at Exh-33 and 35. It is submitted that, on 28-07-2016 joint purshis came to be filed by Counsel of plaintiff and defendant stating therein that the plaintiff is filing affidavit of evidence in English language. On the same day an application was filed by plaintiff seeking permission for leading the evidence in English language. Learned Counsel for defendant has given no objection on said application. Accordingly, the application was allowed and the affidavit of evidence in English language was filed by plaintiff at Exh-24. The defendant is trying to prolong the matter. It is submitted that the procedure is for to reach the ends of justice and it is

settled law that technicalities will not prevail over substantial law. For all these reasons it is prayed that both the applications may kindly be rejected.

4- Heard both the Learned Counsels at length. Perused the case laws relied by Learned Counsel for the defendant.

5- Before adducing evidence, vide Exh-23 plaintiff filed an application to allow him to lead evidence in English language. To this application no objection was given by Learned Counsel of defendant. In view of Order XVIII Rule 9 of C.P.C. and considering the no objection given on behalf of defendant, permission was granted to plaintiff to lead the evidence in English language. Vide Exh-22, both the Learned Counsels filed purshis and submitted that they have no objection if the evidence in the present suit is recorded in English language.

6- Learned Counsel for the defendant submitted that, Section 137 of C.P.C. lays down that the language of subordinate Court may be declared by the State Government. The State Government of Maharashtra has issued Notification on 21-07-1998 and thereby it is declared that the Marathi language shall be used by subordinate Courts except by ten items attached to the schedule of that Notification. On

perusal of the said Notification it is seen that except the medical evidence all other evidence has to be recorded in Marathi language. In view of Order XVIII Rule 5 the cases in which appeal is allowed, the evidence of witness shall be taken down in the language of the Court i.e. in Marathi. As per Rule 6 where the evidence is taken down in language different from that in which it is given and the witness does not understand the language in which it is taken down, the said evidence shall be interpreted in the language in which it is given. In view of para 254 (3) of Civil Manual the evidence of witness shall be recorded in the language of the Court i.e. Marathi beyond the limits of Greater Bombay and in English within the limits of Greater Bombay. The notes of evidence recorded by the Presiding Officer shall be in English where evidence is not given in English. The said para and Order XVIII Rule 9 of C.P.C. further says that, where the evidence is not given in English but all the parties who appear in person, and the pleaders of such parties, do not object to having such evidence being taken down in English, the judge may take down, or cause to be taken down, such evidence in English.

7- Admittedly, in the present matter, Learned Counsel for

defendant has given no objection for leading the evidence in English. Therefore, though language of subordinate court is Marathi, as per Order XVIII Rule 9 the evidence of plaintiff in English can be taken into consideration for the purpose of recording. Though, State Government of Maharashtra has issued Notification in 1998 in view of Section 137 of C.P.C. and excluded ten items attached to the schedule of that Notification, the provisions of Civil Manual and of C.P.C. are not helpful to defendant for the simple reason that no objection has been given for recording the evidence in English and the same has been considered as per Order XVIII Rule 9 of C.P.C.

8- Learned Counsel for defendant placed reliance on the case of i- **State of Maharashtra -Vs- Vilas Desharath Shate & others 1976 U.C.R.(Bom.) 195** it has been held that;

“The memorandum of evidence made by the learned Magistrate in English is not required to be read over to the witness nor was it in this case so read over to the witness and there was no question of the witness being required to state whether what was recorded was correct. Therefore, when a question arises as to what exactly the witness had stated in his evidence, it is the Marathi deposition of the witness which has to be taken into account”.

In that case, there was dispute that article in question i.e. Dhana Dal is food. The food inspector admitted in cross examination

that it is generally consumed after meals and as a flavoring agent. That statement was found in the memorandum of evidence made by the court in English and therefore, it was held that, when question arises as to what exactly the witness had stated in his evidence, it is the Marathi deposition of witness which has to be taken into account. In the case in hand, the plaintiff has sought the permission for leading evidence in English for which no objection has been given by the side of defendant. However, defendant is at liberty to conduct the cross examination in Marathi language. Therefore, there will not be any conflict in respect of what exactly would be stated during cross examination of plaintiff. Therefore with due respect to the observations laid down in the case law above, it is not applicable to the case in hand.

ii- **Bar Council of Maharashtra and Goa and Ors. -Vs- Shamrao Vishnu Kunjir and Ors. 2006 STPL 5423 Bombay {AIR 2006 Bombay 167= 2006(3) Civil Court Cases 496 (Bom.) (DB)}** it has been held that;

“The whole intention of the legislature in bringing about the various amendments to the Code of Civil Procedure and particularly to the Order XVIII Rule 4 of the Code of Civil Procedure, is to avoid delay in recording of the evidence, and therefore the interpretation of the provisions in that regard has to be harmoniously done without

forgetting the legislative intent behind the said rule. In any case, there is hardly any scope left for such interpretation in that regard, consequent to three decisions of the Apex Court”.

In that case, it was held that affidavits have to be prepared in accordance with the rules comprised under Order XVIII and method of filing or placing on record has to be in accordance with the Order XVIII Rule 4 r/w rules 5 and 13 thereof in appeal-able and non appeal-able cases. The present suit is appeal-able but as per Order XVIII Rule 9 of C.P.C. both parties and their pleaders have no objection to lead the evidence in English language. Therefore, the case law is not applicable to the case in hand.

iii- **Satish Dattatray Nadgauda -Vs- State of Maharashtra & Ors. 2007(3) Bom. C.R.791** it has been held that;

“Position of Bombay High Court has changed after erection of State of Goa from 1987 onwards and now it is not High Court of one State (Maharashtra only) but of two States having different languages. In view of it, proviso to Rule (I) of High Court Rules is ultra vires Article 34(1) of Constitution which provides that an English translation of document order, or resolution in languages other than English is required be furnished. Till High Court amends above rules, directed that whatever a Government Resolution circular order is under challenge in a proceedings an English translation thereof must be furnished in terms of mandate of Article 348(1) of Constitution.”

In that case, the petition was disposed off by issuing direction that the respondent State including all local authorities who are conferred power to make orders, rules, regulations and bye laws under the constitution or under the provisions of law must ensure that the English translation of orders, rules, resolutions and bye laws are made available in terms of the mandate of article 348 of the Constitution of India. Therefore, the case law cited above is not applicable to the case in hand.

9- Chapter XXVI of Civil Manual para no.506 to 515 speaks about oaths and affidavits. The evidence of affidavit at Exh-24 filed by plaintiff is verified and he has admitted the contents thereof. Therefore, it cannot be said that the affidavit is not prescribed as per standard of law.

So, considering all these aspects and the fact that, Learned Counsel for defendant has no objection to lead evidence in English in view of purshis and application at Exh-22 and 23, I am of the opinion that, the evidence of plaintiff filed in English language cannot be rejected and he cannot be directed to lead evidence in Marathi language. However, Learned Counsel for defendant is at liberty to conduct the

9 Spl.C.S.73/2014 (Order below Exh-31 & 32)

cross examination of witness in Marathi language. With this observation, I pass following order.

ORDER

1- Applications are rejected.

2- No order as to cost.

Date : 18-11-2016

Sd/-
(Jayshri R.Pulate)
2nd Jt. Civil Judge(S.D)
Jalna.

CERTIFICATE

I affirm that the contents of this PDF file are word to word as per original Judgment.

Name of Steno : Bobde S.V.
Name of court : 2nd Jt. Civil Judge (S.D.), Jalna
Date of PDF : 19-11-2016

Sd/-
Stenographer