

MHKO050005232017



**Order below Exh. 41 in**  
**Regular Civil Suit No. 52/2017.**

1. Perused the application.
2. This is an application filed by defendant to recast the issues framed below Exh.33. The defendant has submitted that, present suit is filed under the provisions of the Specific Relief Act. The defendants have filed their written statement and counter claim. The defendants have pleaded that, the relation between the plaintiff and defendants are as a mortgagor and mortgagee, creditor and debtor. Moreover, the defendants have come with the case that, they have borrowed 2.5 kg silver metal from the plaintiff in the year 1991 for business purpose and for security of amount of silver metal the plaintiff has got executed the registered document bearing No. 2906. Though the issues have been framed but issues regarding these important pleadings have not been framed. Therefore, present application is filed for framing additional issues. The proposed additional issues are necessary to be framed for the final adjudication of the suit on merit. If the present application would be allowed then the plaintiff will suffer no loss. On the contrary, the defendants will suffer irreparable loss. Lastly, the defendants have submitted

to frame additional issues as mentioned in the application.

3. The plaintiff has resisted the application by filing say at exhibit 43. The plaintiff has submitted that, the present application is false and frivolous. Previously the defendants have already filed an application to recast the issues on 13/03/2019. But at that time they did not requested to frame additional issues as prayed in present application. Hence, the defendants are intending to delay the hearing of suit. The plaintiff has already filed affidavit of examination in chief. The present application is filed with intention to cause delay. The proposed additional issues are not necessary to be framed. Hence, the application may kindly be rejected. If the court comes to the conclusion that, the application is liable to be allowed then heavy cost may be imposed upon the defendants. Lastly, the plaintiff has submitted to reject the application.

4. Perused the record. Heard both the Ld. Advocates for parties. Ld. Advocate for defendants have submitted that, the proposed additional issues are necessary to be framed for the final adjudication of the suit on merit. The plaintiff's evidence is yet not completed. Hence, the plaintiff would get a fair opportunity to lead evidence on additional issues. On the contrary, if such permission would not be granted then the defendants will suffer huge loss and they would unable to prove the contentions of the counter claim.

5. The Ld. Adv. for plaintiff has contended that, the application is filed belatedly and with intention to cause delay. Already the defendants have filed an application to frame the additional issues but, at that time, they did not prayed to frame present proposed additional issues. The defendants only intention is to cause delay to the hearing of the suit. Hence, to avoid such fraudulent practices it is necessary to reject the application by imposing heavy cost.

6. As stated above perused the record. Moreover, perused the pleadings and issues of Exh.33. After perusing the pleadings of the parties it reveals that, the proposed additional issues are necessary to be framed for the final adjudication of the suit on merit. Though the plaintiff has filed his affidavit of examination in chief but the cross-examination of plaintiff is yet not started. Means the plaintiff's oral evidence is still not concluded. The proposed additional issues are regarding the important facts upon which the parties are at variance. The right decision of the suit is depending upon the framing of proposed issues. If the application would be allowed then the plaintiff will suffer no loss. On the contrary, the defendants will suffer huge loss and would not get a fair chance to prove their counter claim's contentions. Hence, in the interest of justice and in order to decide the suit on merit it would be proper to frame additional issues as prayed. Moreover, considering the record of the suit it would be proper to impose certain

costs upon the defendants because they have filed this application belatedly. Resultantly I pass following order,

**ORDER**

- 1) Application is allowed subject to cost of Rs. 200/- (Rupees Two Hundred Only) payable by defendants to the plaintiff.
- 2) The parties to take note and suit to proceed further.

(Dictated and pronounced in open court.)

Date : 06/01/2021  
Ichalkaranji

( Smt. A. S. Jadhav )  
4<sup>th</sup> Jt. Civil Judge Junior Division,  
Ichalkaranji

-- C E R T I F I C A T E --

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

Name of stenographer	R. D. Jadhav
Name of Court	Sou. A. S. Jadhav, 4 <sup>th</sup> Jt. Civil Judge Jr. Div., Ichalkarnaji.
Date of Dictation	06/01/2021
Order signed by P.O. on	06/01/2021
Order uploaded on	08/01/2021