

MHKO050033562022



ORDER BELOW EXH. NO. 12 IN
SPECIAL CIVIL SUIT NO. 94/2022
M/s Upkar Tex Com Prop. Chameli Bharat Salecha
Through Tilok Nemaram Kumawat
Vs.
M/s K. Apparels prop. Kejal Arvind Bakhai

This an application filed by defendant under Order XIV Rule 5 of Code of Civil Procedure to amend the issue No. 3 and 4.

2. According to defendant the issues are framed by this court at Exh. 11. The issue No. 3 and 4 are as follows.

3. Do defendants prove that, the plaintiff is not the proprietor of M/s. Upkar Texcom and therefore, shi has no right to execute the power of attorney in favour of Mr. Tilok Nemaram Kumawat ?
4. Do defendants prove that, they have not received notice sent by plaintiff through RPAD on 28/12/2021?

3. The above issues shows that the negative burden is placed on defendant. It is necessary to amend the issues framed in this matter. The evidence is yet to be commenced. Therefore, application needs to be allowed in the interest of justice.

4. The plaintiff resisted the application and filed is say stating that the application is false and frivolous. In order to prolong the matter present application is filed. The issues are correctly framed. It is not necessary to amend issues framed by this Court.

5. Heard the both the sides. Perused the application and say.

6. I have gone through the documents. This is suit for recovery of money. The written statement discloses that the defendant has denied proprietor ship of the plaintiff firm. He has also denied that

the notice sent by plaintiff through RPAD on 28/12/2021 is not duly served on the defendant. It is well settled law that the plaintiff has to prove his case on his own feet. He can not take shelter of weakness of the defendant. No doubt the defendant can take many defenses to resist the claim of plaintiff.

7. Order XIV Rule 5 of Code of Civil Procedure, 1908 reads as under.

- (i) *Power to amend and strike out issues- The Court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties shall be so made or framed.*
- (ii) *the Court may also, at any time before passing decree, strike out any issues that appear to it to be wrongly framed or introduced.*

8. In general burden of proof, especially in negative burden, does not automatically shift to the defendant in legal proceeding. The initial burden of proving the a case, including every element topic, typically rests with the plaintiff. However, the burden of proving certain defenses or exceptions may shift. In the present matter whether plaintiff is proprietor of the firm and whether the notice dt. 28/12/2021 sent by him to the defendant by RPAD are the facts within the special knowledge of the plaintiff. Therefore, this facts must be proved by the plaintiff by leading cogent evidence. The burden of proving this facts cannot be shifted on defendant. More particularly negative burden cannot be shifted on defendant. Hence, in these circumstances the issue No. 3 and 4 must be amended as follows.

3. Does plaintiff prove that, she is the proprietor of M/s. Upkar Texcom and she has right to execute the power of attorney?

4. Does plaintiff prove that, she has sent notice dated 28/12/2021 to the defendant?

Hence, I pass the following order :

ORDER

- 1) Application is allowed.
- 2) Earlier issue No. 3 and 4 at Exh. 11 be amended in view of this order.
- 3) No order as to costs.

Ichalkaranji
Date :- 24/04/2025

(G. M. Nadaf)
Jt. Civil Judge, Sr. Dn., Ichalkaranji,
Dist. Kolhapur