

MHK0070001592011



ORDER PASSED BELOW EXH. 56

1. Perused the application and handwritten say of plaintiff on the overleaf of the application. Heard both sides. It is matter of record that, on 27/06/2011 no W.S. order was pass against defendant No.1 because though he appeared but, failed to file W.S. within time. Defendant No.2 is dead and therefore, suit is abated against him on 19/08/2017.

2. Suit is for specific performance of contract. By way of subsequent amendment, plaintiff has sought alternate relief as provided by Section 22 of Specific Relief Act. Record shows that, suit is proceeded without W.S. of defendant No.1. Now he is seeking permission to file written statement to the amended plaint. According to defendant No.1 he is served with copy of amended plaint. In order to decide suit on merit his written statement to the amended plaint is needed to be recorded.

3. According to plaintiff, there is no any change in the nature of suit after the amendment in plaint. When already no W.S. order is passed against defendant No.1 and

his previous W.S. is not taken on record by court, defendant No.1 is now not entitled for filing his W.S. to amended plaint.

4. I have gone through record. Heard both sides at length. It is matter of record that, earlier W.S. of defendant No.1 is refused to be taken on record by court due to delay on the part of defendant No.1. Suit is part heard. According to learned advocate appearing on behalf of defendant No.1, this court can exercise discretion provided under Rule 10 of Order 8 of Code of Civil Procedure and allow their application for achieving ends of justice. In support of his contentions he relied on case of Vimalkumar Nathmal Goenka V/s. Vinod Kumar Nathmal Goenka and others reported in 1990(1) Mh.L.J. 180 wherein Hon'ble Bombay High Court has held that, even after argument, case is closed for judgment, Court can used powers under Rule 10 of Order 8 and take written statement of defendant on record.

5. In my opinion the ratio in above case will be perfectly applicable to the case in hand. Admittedly previous W.S. of defendant No.1 was rejected on account of his delay. But now he has file present application immediately after receipt of amended copy of plaint. His application is supported with his written statement. If his W.S. will be taken on record no any prejudice will be caused to the

plaintiff. On the contrary suit will be decided on merits. It will avoid multiplicity of the proceeding. The entire purpose of trial is to ascertain truth and achieve ends of justice. Thus, in my opinion this is fit case for using discretion as stated above by the court. However, while doing so plaintiff is required to be compensated with appropriate cost. For all above reasons, I proceed to pass following order.

ORDER

1. Application Exh.56 is allowed in the interest of justice, subject to cost of Rs. 5,000/- (Rs. Five thousand only).
2. On payment of above cost by defendant No.1 to the plaintiff on or before next date, written statement to the amended plaint filed by defendant No. 1 will be taken on record.

Sd/-

(B.A. Gaikwad)

Dt.: 10.01.2022.

Civil Judge Sr. Division, Jaysingpur