

CNR No.MHNS130003932022

R.C.S. No. 77/2022

Mehmood Shaikh
Shaikh Imitiyas

Vs.



ORDER BELOW EXH. 42

The present application has been filed by defendant no. 7 for cancellation of written statement which was earlier filed at Exh.25. Perused the application and say filed by plaintiff at Exh.49. Heard both.

2. Defendant no.7 contended that plaintiff and defendant no.6 deceived him and filed written statement of defendant no.7. He contended that he himself never filed any written statement. Further, written statement at Exh. 25 is filed on record by playing fraud. The said written statement is not voluntary. Hence, it is prayed that earlier written statement at Exh.25 may be cancelled or it may be permitted to withdraw the same.

3. Plaintiff resisted the application by filing his say at Exh.49. He contended that the application is false, frivolous and misconceive in nature. It is contended that the application is unknown to the law. Hence, it is prayed that application may kindly be rejected.

4. According to Order VIII Rule 9 of Code of Civil Procedure, pleadings subsequent to the written statement other than by way of defence to set off or counter claim shall be presented with the permission of the Court.

5. According to the provisions of the Civil Procedure Code, Order VIII Rule 8 if new ground of defence has arisen after the presentation of written statement, set off or counter claim may be raised by the defendant in his written statement. According to the relevant provisions of C.P.C., in the present set of facts insertion of subsequent pleading can be allowed in the written statement if the Court deems it fit.

6. Written statement shall form by denials and admissions. Admissions, if true, and clear are by far the best proof of the facts admitted. Admissions in pleadings or judicial admissions made by the parties or before the hearing of case, stand on a higher footing than evidential admissions. Admissions in pleadings or judicial admissions are admissible under section 58 of the Evidence Act. Therefore, if the permission to withdraw or cancel the written statement is allow then, it would caused such prejudice to the other side which cannot be compensated adequately in terms of money and it will change the nature and character of the case.

7. In the case in hand defendant no.7 has filed written statement at Exh.25 on 19/10/2022 through his learned

advocate along with an affidavit annexed with it . Had it been a case of defendant no.7 that he had not signed the written statement at Exh.25 and he was absent at the time of filing of it. Therefore, at this stage, permission to withdraw the written statement or order of cancellation of written statement cannot be granted. Hence, application deserves to be rejected. In the result, following order is passed :-

ORDER

1. The application (Exh.42) is rejected.
2. Cost in main cause.

Date : 10/02/2025

(P.D.Kolekar)
Civil Judge Junior Division,
Pimpalgaon(B.)