

ORDER BELOW EXH. 151

1. This application is filed by the plaintiff to frame additional issues and defendant have filed say below it. Perused application, say and record.
2. Plaintiff has filed this suit on 09/06/2016. Defendants appeared and filed written statements on 02/07/2016. Later on they filed application below exh.66 to amend the written statement and seek permission to file counter claim. Said application has been allowed and it was directed to file separate counter claim vide order below exh.66. Later on in compliance of said order defendants filed amended copy of written statement below exh.81. It was not filed in accordance with operative order no.2 of the order below exh.66. Therefore to justify their compliance of operative order No.2 defendants relied on judgment of Hon'ble Supreme Court in AIR 2003 Supreme Court – 2508 by filing pursis below exh.85. But already by order below exh.66, I have mentioned the manner to file counter claim to avoid technical confusion in said matter. Therefore defendants have filed pursis below exh.99 and stated that they have filed separate counter claim as per order of court and to avoid technicality also filed application below exh.95 for condonation of delay. In fact defendants have filed their counter claim within time, therefore by detail order below exh.95, I allowed said application and condoned the delay. It means at this juncture the amended copy below exh.81 is not the part of the pleadings and instead of said amended W.S the counter claim below exh.100 is in force. As per order below exh.95 I have cleared the doubts about the confusions regarding form of counter claim. Hence now that objection is not under dispute. Hence the proposed issues regarding exh.81, 100, 84, 95, 85 and 99 are not required to deal again in said matter. There is no specific pleading

of plaintiff in his W.S. at exh.103 on the point of limitation and assessment of counter claim. Hence I do not found any reason to cast additional issue on the point of limitation and assessment of counter claim. Therefore, only due to technical and hipper technical points, I do not found any vitiating circumstances in this case, which will cause injustice to the plaintiff. For the sake of objection on the point of order 6 rule 17 of CPC raised by the plaintiff that, pleadings cannot be withdrawn by the advocate, I must say that there is no addition or deletion of the contents from amended written statement filed below exh.81 while filing fresh counter claim below exh.100. Hence I do not found any withdrawal of pleading. Therefore, it is not necessary to ask the parties to file separate application on their behalf to withdraw the pleadings under written statement below exh.81. Hence I do not found any merit in this application other than technicality. Hence I am passing following order.

ORDER

Application below exh.151 hereby rejected.

Date :02/02/2019
Daund

(**Shri. P. G. Lambe**)
Jt. Civil Judge Jr. Division Daund,
Taluka Daund Dist-Pune