

ORDER BELOW EXH. 20 IN REGULAR CIVIL APPEAL NO. 139/2019

01] This is an application filed by respondent No. 1 for filing photocopy of the written statement.

02] Appellant has filed his say and thereby strongly opposed this application.

03] Perused the application and record of the case. Heard both sides. Appellant is the original plaintiff and the respondents are the original defendants in Regular Civil Suit No. 142/2005. Said suit has been dismissed on 21/09/2012 by way of Judgment by the then 2nd Jt. Civil Judge, J.D. Panvel. The plaintiff has preferred the present appeal against the Judgment and Decree. R & P has been called from the Lower Court. Paper book is also prepared. However, in the paper book there is no written statement of defendant No. 1. As per defendant No. 1, he has filed written statement on 24/03/2006, however, it does not find place in the appeal.

04] The learned Counsel for the plaintiff has objected the application. He has submitted that he did not get information about filing of written statement from the Lower Court advocate. It seems that the defendant No. 1 had not filed the written statement. He has not seen the copy of that written statement. It shows that the plaintiff is not totally denying that the defendant No. 1 has not filed written statement.

05] The Roznama of RCS No. 142/2005 dated 24/08/2006 shows that the written statement has already been filed. In the

Judgment of Lower Court, there is reference of written statement filed by defendant No. 1 in Para 3. Further, the defendant No. 1 has also led evidence. He has filed his evidence on affidavit vide Exh. 51. If there had not been written statement of defendant No. 1, he would not have been allowed to lead evidence. Therefore, it shows that the defendant No. 1 had filed written statement in the suit. However, the said written statement is not there on record. Upon perusal of the copy of that written statement, it shows that the contents therein has been taken into consideration and mentioned in Para 3 of the Judgment.

06] The Judgment of the Lower Court is of year 2012. Appeal is pending since January 2013. More than 9 years have been elapsed since filing of the appeal and in order to decide the matter on merits at the earliest, the copy of the written statement filed by respondent No 1 needs to be taken on record. Hence, application is allowed. Permission granted to file the copy of written statement on record as prayed.

Panvel,
Dated :- 07/10/2022

Sd/-
(R. S. Bhakare)
Ad-hoc District Judge-1,
Panvel-Raigad.