

**COMMON ORDER BELOW EXHS.173 & 175 IN RCS NO.13/2005.**

1. Perused both these applications filed by defendant no.7 for amending his written statement contending that, previously defendant no.7 i.e. a public trust filed written statement, but at that time no advocate was appointed on behalf of said trust and so the written statement was came to be filed in favour of the plaintiffs, which is neither objective nor believable and therefore defendant no.7 wants to amend its previous written statement and for that purpose the present two applications are filed by him. Both these applications are strongly opposed by the plaintiffs by filing say at Exhs.174 & 178 contending that, the proposed amendment in written statement is not formal in nature, as such defendant wants to withdraw the earlier admissions given in the previous written statement and also he wants to take a total contrary plea of previous written statement. Accordingly, as per say of plaintiffs, by the proposed amendment the nature of written statement is totally going to be changed and which adversely affects their rights and also they will seriously prejudice by it. So, considering all these aspects, the plaintiffs prayed for rejection of both these applications.

2. Heard both respective advocates at sufficient length and time. I have also gone through the record & proceeding.

3. Considering the rival submissions and contentions of both sides, the following points arise for my determination, on which I have recorded my findings, with reasons, thereon as under.

<b>POINTS</b>	<b>FINDINGS</b>
1 Does it permissible to amend the written statement as contended in applications ?	:- No.
2 Whether the applications are liable to be allowed?	:- No.
3 What order?	:- Applications are rejected.

## **REASONS**

### 4. **As to point nos.1 to 3 :-**

The learned advocate for defendant no.7 by pointing out the documents filed on record alongwith the lists Exhs.177, 181 & 183 submitted that, the previous written statement filed by defendant no.7 i.e. a public trust was filed without appointing any advocate and also it was filed only to support the claim of plaintiffs as plaintiff no.1 was serving with the trust at the relevant time. So, now defendant no.7-trust has appointed a legal advocate and after getting the legal assistance, defendant no.7 wants to amend his written statement. Therefore, considering all these aspects, in the interests of justice, he prayed for allowing these applications. He further submitted that, eventhough defendant wants to take a new ground of defence by substituting or altering the previous defence or taking inconsistent pleas in the written statement by way of adding, altering or substituting it by way of amendment, it is necessary to be allowed as the rules of amendment in respect of written statement is at different footing than in respect of plaint. On this submission he has relied on the authorities of Hon'ble Supreme Court in the cases of ***Usha Balashaheb Swami Vs. Kiran Appaso Swami, 2007 Law Suit (SC) 461*** and ***Panchdeo Narain Srivastava Vs. Jyoti Sahay, 1983 Law Suit (SC) 71.***

5. Per contra, the learned advocate for plaintiffs strongly opposed the above argument and submitted that, defendant cannot be permitted to withdraw the earlier admissions given in his previous written statement and the present defendant no.7 wants to withdraw the admissions given in the previous written statement by taking the totally contrary plea. So, as per his submission, the proposed amendment in written statement cannot be allowed. On this submission he also relied on the authorities of Hon'ble Supreme Court in the case of ***Gautam Sarup Vs. Leela Jetly & others, 2008 ALL SCR 1678*** and our Hon'ble Bombay High Court in the case of ***S. Narendra Kumar & Co. Vs. Apricot Foods***

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6. I gave thoughtful consideration to the submissions made by both sides. I have also gone through the authorities relied by both sides. I have also gone through the record & proceeding and documents filed on record.

7. Firstly, here I would like to mention that, in view of order passed today below Exh.157, the present two applications will be redundant at this stage, as such by allowing the said application of the plaintiff filed at Exh.157, it is permitted to them to delete the name of defendant no.7. So, no question arose to consider his previous written statement filed at Exh.21 and therefore consequently it is not necessary to consider the present two applications for the amendment of the said previous written statement of defendant no.7. So, on this sole ground, both these applications are liable to be filed on record as they are redundant at this stage.

8. Be that as it may, as such the respective advocates gave much trace on the applications filed at Exhs.154 & 157 alongwith present two applications i.e. Exhs.173 & 175 and also the argument was advanced in respect of which application is necessary to be decide firstly, I am going to decide these applications simultaneously alongwith the applications at Exhs.154 & 157, on merit, as under :-

9. If we perused both these applications of defendant no.7 alongwith the previous written statement filed by him at Exh.21, it is surprise to note that by this proposed amendment the present defendant wants to withdraw the earlier admissions given in the said written statement by introducing the total new facts, which admittedly seriously prejudice with the plaintiffs and it is settled principle of law that by way of amendment, the admissions given earlier cannot be withdrawn eventhough the said admissions are in the written statement. The similar

principle is laid down in the authorities relied by the plaintiffs cited supra and the ratio laid down in both these authorities is squarely applicable to the present case. So, considering the ratio laid down in these authorities and as such defendant no.7 is going to withdraw admissions given earlier in his written statement by proposed amendment, in my considered opinion it cannot be allowed.

10. On the given facts & circumstances of the present case, the authorities relied by the defendant cited supra are not helpful to the defendant as the facts & circumstances of the present case in hand and the cases before Hon'ble Apex Court are totally different, as such in that cases the amendment applications were allowed by observing that by way of amendment, the parties are not withdrawing their earlier admissions, but they want to add some facts by maintaining the earlier admissions. So, in that situation, the amendment applications were allowed. But, admittedly in the case in hand and as I mentioned earlier that the present defendant no.7 wants to withdraw the earlier admissions given in his previous written statement filed at Exh.21 and wants to add a totally contrary plea, it cannot be allowed at all.

11. Thus, considering all above aspects and discussion in foregoing paragraphs, I come to the conclusion that, by the proposed amendment, the nature of written statement is going to be totally changed and the proposed amendment is not formal in nature and further it amounts to withdraw the earlier admissions, which cannot be allowed. So, the present applications are liable to be rejected on that count also. Accordingly, I answer point nos.1 & 2 in negative and to answer point no.3, I proceed to pass following order.

**ORDER**

- 1) Both applications are rejected.
- 2) Cost in cause.

**Vengurla.**  
**Date:- 21/06/2016.**

**( D. S. Zanvar )**  
**Civil Judge Jr.Dn., Vengurla.**