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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION***

WRIT PETITION NO. 2044 OF 2013

Mr. Bhagwan Rama Patil.

... Petitioner.

V/s.

Grampanchayat, Mouje Koge,
Taluka Karveer, Dist. Kolhapur
through Sarpanch & Ors.

... Respondents.

Mr. N.V. Bandiwadekar for the Petitioner.

Mr. Surel Shah for the Respondents.

CORAM : N.M. Jamdar, J.

20 September, 2016.

Oral Order :-

By this Petition, the Petitioner challenges the order passed by the learned Civil Judge, Junior Division, Kolhapur dated 6 November 2012, wherein the application filed by the Petitioner for removal of affidavit of examination-in-chief dated 14 August 2012, filed on behalf of the Grampanchayat by one Raghunath Mahadeo Mangore, was rejected.

2. The Suit has been instituted after granting leave under Order 1 Rule 8 of the Code of Civil Procedure on 16 June 1981. An affidavit of evidence has been filed on behalf of Plaintiff No.1 by the present Petitioner. When an affidavit is sought to be tendered on behalf of the Grampanchayat, an application was moved by the Petitioner for removal of the affidavit from record and that should not be read in evidence.

3. The learned Counsel for the parties have urged various points as to the legal position regarding whether the affidavit once tendered can be removed and at what stage it should be considered part of the evidence. No absolute proposition of law has been shown that once leave under Order 1 Rule 8 is granted, there can only be one affidavit of evidence. The apprehension expressed by the Petitioner is that the said witness i.e. Mr. Mangore under cross will give admissions which will affect the cause espoused and it is the contention of the Petitioner that the said witness and the Respondents are acting in collusion. The affidavit in examination-in-chief by itself does not give any indication that it is filed contrary to the interest of the cause of the Plaintiff seeks to represent. It cannot be presumed at this stage that this witness would act contrary to the interest of the Plaintiffs. However, such possibilities in litigation of this nature cannot be ruled out. Therefore, if any admissions as apprehended by the Petitioner are given by this

witness, the learned Civil Judge will no doubt keeping in mind the purpose of provisions of Order 1 Rule 8. A presumption is not warranted that the learned Civil Judge will not keep in mind the provisions of Order 1 Rule 8 and permit the cause sought to be espoused to suffer because of one witness acting contrary to the interest of the entire cause. Since situation is yet to arise and the Civil Judge is fully competent and well within jurisdiction to consider such admissions in the cross-examination, the apprehension expressed by the Petitioner is not warranted. With this clarification, the Writ Petition is disposed of.

(N.M. Jamdar, J.)