

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 939 OF 2018

RAMRAJ VITTHAL DANDAGE
VERSUS
LAXMI SRIDHAR CHAUDHARI

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Advocate for Petitioner : Shri Sabnis Ameya N.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: January 24, 2018

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PER COURT :-

1. The petitioner is aggrieved by the order dated 18.4.2017, by which, application Exhibit 53, seeking amendment to the Written Statement in RCS No.209 of 2012 has been rejected.

2. I have heard the strenuous submissions of the learned counsel for the petitioner / defendant No.1. Exhibit 53 has been rejected by the impugned order since the petitioner desired to withdraw all admissions set out in the Written Statement as well as the prayer and seeks to replace them with diagonally opposite pleadings and the prayer that the suit be dismissed.

3. Though inconsistent stands can be taken in a Written Statement by a defendant, there cannot be an order permitting to withdraw

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practically the entire Written Statement and putforth such averments through the amendment, which would result in taking a completely opposite stand.

4. Learned counsel for the petitioner submits that the Code of Civil Procedure ("CPC") can permit a defendant to file an additional Written Statement with the leave of the Court by maintaining what has been averred in the Written Statement, notwithstanding that the Additional Written Statement may contain an inconsistent stand vis-a-vis Written Statement. He, therefore, seeks to withdraw the Writ Petition so as to resort to such remedy.

5. Considering the above, this petition is disposed off as withdrawn with liberty to the petitioner to avail of a remedy as is permissible in law. In the event of the petitioner preferring an application for filing an Additional Written Statement, the trial Court will consider the same on it's own merits and by taking into account the judgments cited.

(RAVINDRA V. GHUGE, J.)

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