

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1289 OF 2008

Shri Popat @ Haribhau Maruti Pawar
Since deceased through legal heirs
Smt. Malan Popat @ Haribhau Pawar & Ors. ...Petitioners

Versus

Shri. Santosh Padu Pawar
Since deceased through his legal heirs
Smt. Asha Santosh Pawar & Ors. ...Respondents

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Ms. Smita R. Gaidhani for the Petitioners.
Mr. J.S. Yadav i/b. Mr. G.C.Sawant for Respondent Nos. 1B and 9.
Mr. S.T. Bhosale i/b. Mr. Dilip Bodake for Respondent No. 10.

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CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE : **JUNE 05, 2018**

P.C.:

1. This Writ Petition is directed against the order dated 1st January, 2008 passed by the learned Civil Judge, Junior Division, Khandala, below exhibit 336, in Regular Civil Suit No. 58 of 1986

wherein the Court allowed respondent no. 1B i.e., defendant no. 1B to withdraw written statement marked at exhibit 261.

2. The learned Counsel for the petitioners has submitted that defendant no.1B filed his written statement on 13th March, 1995, which is at exhibit 86, where he has denied the pleadings of the petitioners. However, he has filed second written statement on 13th February, 2003, which is at exhibit 261. She has further submitted that respondent nos. 4 to 8 and 10 i.e., defendant nos. 4 to 8 and 10 have made an application at exhibit 267 to de-exhibit the written statement, which is at exhibit 261. She has pointed out that the learned Judge of the trial Court by his order dated 3rd November, 2003 rejected the application, which is at exhibit 267 and did not de-exhibit the second written statement i.e., exhibit 261. She has further submitted that once the trial Court has rejected the application of de-exhibiting the written statement, which is at exhibit 267 by its own order dated 3rd November, 2003, the trial Court again cannot de-exhibit the written statement, which is at exhibit 261 by the next order dated 1st January, 2008. The trial Court cannot reverse its own order. Such reversal is illegal. She has further submitted that defendant no. 1B has taken a

contradictory stand in both the written statements, which are at exhibits 86 and 261 respectively and, therefore, both the written statements are on record. Hence, the subsequent order passed by the learned Judge of the trial Court allowing to de-exhibit exhibit 261 is illegal and is to be set aside.

3. Perused the order passed below exhibit 267 so also the impugned order dated 1st January, 2008. There are two written statements, which are at exhibits 86 and 261 respectively, filed by defendant no. 1B. Application below exhibit 267 was not filed by defendant no. 1B, who is a signatory of the written statement, which is at exhibit 261. Defendant no.1B filed an application below exhibit 336 praying that he wants to withdraw the said written statement. The learned Judge of the trial Court has considered all aspects and has taken a correct view to allow the withdrawal of the written statement, which is at exhibit 261. The learned Judge has rightly mentioned that if the party has taken contradictory stand, those contradictions can be brought on record in the cross-examination. I do not find any merit in this Writ Petition. However, at this stage, no interference is required. Writ Petition is accordingly dismissed. The suit is pending since 1986. The trial Court to hear

the matter and conclude it preferably on or before 31st October, 2018. Parties to co-operate the trial Court.

(MRIDULA BHATKAR, J.)