

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.8215 OF 2015

Mahadeo Sadashiv Mali,
Age : 55 years, Occupation : Agriculture,
R/o Nitali, Tq. & District : Osmanabad.

...PETITIONER

-VERSUS-

Shardabai Laxman Parit,
Age : 52 years, Occupation : Household,
R/o Limboni Bag, Tambri Vibhag,
Osmanabad, Tq. & District : Osmanabad.

...RESPONDENT

...

Advocate for the Petitioner : Shri Patil Indrale Anand V.

Advocate for the Respondent : Shri Nagargoje Ankush N.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 09th October, 2019

Oral Judgment :

1 Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2 The petitioner, original plaintiff in Special Civil Suit No.140/2011, is aggrieved by the order dated 01.07.2015 passed by the Trial Court, by which, the application exhibit 49 filed by the respondent/defendant seeking leave to amend the written statement under Order 6 Rule 17 of the Code of Civil Procedure, has been allowed.

3 I have considered the strenuous submissions of the learned

advocates for the respective sides, I have gone through the twelve grounds formulated in the memo of the petition and I have perused the petition paper book with their assistance.

4 The petitioner was earlier before this Court in Writ Petition No.9145/2012. He had challenged the order of the Trial Court dated 13.07.2012 declining him the permission to amend the plaint. After hearing the parties, the said writ petition was allowed by the order dated 28.03.2014 and while permitting the petitioner/ plaintiff to amend the plaint, the respondent/ defendant was granted an option of preferring an additional written statement in order to raise a proper defence against the amended portion in the plaint.

5 By the application exhibit 49 filed by the defendant on 14.01.2015, leave to amend is sought and it is proposed that the particular portions of the written statement be deleted and be replaced by new portions. By the impugned order, the Trial Court has allowed the application exhibit 49 by concluding that the amendment is in tune with the earlier pleadings in the written statement.

6 It is well settled that certain admissions or averments made in the written statement cannot be deleted unless it is conclusively established that it suffered from typographical errors. Even this ground is to be scanned with great strictness and the permission to delete the admission or the statement made in the written statement and substitute

such statement with diagonally opposite statement, shall not be lightly granted.

7 Notwithstanding the above, this Court had permitted the defendant to file an additional written statement to counter the amended portion in the plaint. Such liberty could not have been misinterpreted to mean that the defendant was permitted to delete the portions from the written statement and substitute the same with a different story.

8 In view of the above, this Writ Petition is partly allowed. The impugned order dated 01.07.2015 is quashed and set aside and the application exhibit 49 is partly allowed to the extent of enabling the defendant to add the pleadings in the written statement in view of the earlier order of this Court dated 28.03.2014. Deletion of any portion from the written statement would be impermissible.

9 Needless to state, all the contentions of the litigating sides are kept open for the Trial Court to consider while deciding the suit on its own merits.

10 The additional written statement containing the proposed additions to the written statement shall be filed, if not already filed, on or before 22.10.2019.

11 Rule is made partly absolute in the above terms.