

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

WRIT PETITION NO.7532 OF 2013

TULSHIRAM YADAV PATIL

..PETITIONER

VERSUS

**SHASHIKANT PANDHARINATH PATIL
AND OTHERS**

..RESPONDENTS

...

Mr. L. V. Sangeet, Advocate for the Petitioner.
Mr. Sanket Kulkarni, Advocate for Respondent Nos.1
to 5.

...

CORAM : S. V. GANGAPURWALA, J.

DATED : 14th JANUARY, 2022.

PER COURT:-

1. The present petitioner is Original Plaintiff. He has filed Suit for specific performance of contract. The respondents filed written statement. The petitioner/plaintiff led his evidence. After the closure of the evidence of Plaintiff, the Defendants also filed examination-in-chief and thereafter, filed an application for amendment. The application is allowed. Aggrieved thereby, the present petition.

2. Mr. Sangeet, learned counsel submits that, respondents/defendants in the written statement specifically admitted the Sauda Pavati. Now amendment is taking away the admission given by them in the written statement. The learned counsel further submits that, admission cannot be retracted

by an amendment and that too after the plaintiff has closed his evidence.

3. The learned counsel for the petitioner relies on the following judgments:

1. Janu Laxman Kumbhar Vs. Pandurang Laxman Kumbhar reported in 2001 (4) Mh.L.J. 159.

2. Heeralal Vs. Kalyanmal reported in 1998 (1) SCC 278.

4. I have heard Mr. Kulkarni, learned counsel for respondent nos.1 to 5.

5. It appears that, the plaintiff has closed his evidence and thereafter, the present application for amendment is filed. I would have appreciated the arguments of Mr. Sangeet, learned counsel for petitioner, had it been the case of withdrawal of admission given in the written statement. The defendants intended to introduce paragraph no.22-A. By introducing paragraph 22-A, the defendants only wanted to convey that, because of recitals in the Sauda Pavati, the Sauda Pavati is *void ab initio*. The defendants are not in any way taking away the admission given by them or are not denying the Suda Pavati even remotely. Only legal submission is added that, the document is *void ab initio* meaning thereby, document does not have a legal existence. By an amendment the defendants are not retracting any admission made if any in the original written statement. By

amendment also the defendants are not denying the Sauda Pavati, but only a legal submission is being made.

6. In view of that, order of Trial Court is not interfered with.

7. Writ Petition is disposed of. No costs.

(S. V. GANGAPURWALA)
JUDGE

Devendra/January-2022