

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1314 OF 2021

Mr. Yashwant Shankarrao Nimhan

...Petitioner

Versus

Mr. Dattatray Dnyaneshwar Maske and Others

..Respondents

Mr. Jaydeep S. Deo for the Petitioner.

Mr. Shantaram Tarale i/b. Ms. Geetanjali Shinde for Respondent Nos.1 and 2.

Coram : Sharmila U. Deshmukh, J.

Date : 10th July , 2023.

P. C. :

1. Heard.
2. The Petition questions the order dated 16th September, 2019 and the order in review dated 10th January, 2020 rejecting the Petitioner's application for withdrawal of the written statement.
3. The facts of the present case are peculiar in as much as without being impleaded as party Defendant to the proceedings the Petitioner herein at the stage of filing of the application under Order I Rule 10 filed his written statement. The written statement came to be filed on 6th July, 2013 and consequent to change of advocate in September 2013 it came to the notice of the Petitioner that his written statement could not have been filed as he was not a party at

that stage. An application below Exhibit 29 came to be filed by the Petitioner for withdrawal of the purported written statement, to which the reply was filed by Respondents-Plaintiffs objecting on the ground that the admissions cannot be permitted to be withdrawn. There was no order passed on the said application. Subsequently, the application under Order I Rule 10 came to be allowed and the Petitioner was impleaded as party Defendant to the Suit, and plaint came to be amended on 11th March 2014. Thereafter the Petitioner filed his written statement below Exhibit 45. On 16th September, 2019 the matter was listed for evidence of the plaintiffs and at that time the advocate for the plaintiffs brought it to the notice of the trial Court that the application below Exhibit 29 seeking to withdraw the first written statement is pending for adjudication and it is required to be decided first.

4. By order dated 16th September, 2019 the trial Court held that the written statement filed below Exhibit 14 would be treated as written statement of the Petitioner and the subsequent written statement filed below Exhibit 45 would be discarded. The review application seeking review of the order also came to be rejected as such giving rise to the present Petition.

5. Learned counsel appearing for the Petitioner has taken this Court through the various orders passed and would submit that the

document said to be the written statement below Exhibit 14 was in fact not a written statement in eyes of law for the reason at the stage of the filing the purported written statement the Petitioner was not party Defendant to the proceedings. He would further submit that subsequently the Petitioner had filed his written statement which was taken on record below Exhibit 45 and issues came to be framed based on the subsequent written statement. He would urge that it is only the written statement filed below Exhibit 45 which can be considered to be the written statement of the Petitioner-Defendant.

6. Per contra, learned counsel appearing for the Respondents-Plaintiffs points out that the first written statement below Exhibit 14 contains admissions and the Petitioner cannot be permitted to withdraw the admissions made therein. He would further contend that an objection in that behalf was filed by way of reply to the application below Exhibit 29 seeking to withdraw the written statement.

7. Considered the submissions of the parties.

8. The sequence of events which is narrated above is not disputed by the learned counsels for the parties. At the stage when the first document claiming to be written statement came to be filed, at that stage, the Petitioner and the Respondent No.5 were the proposed Defendant Nos.3 and 4 in the suit. They were yet to be

impleaded as party to the suit and due to an error on part of their counsel the document came to be filed as written statement. Upon realising this mistake an application came to be filed below Exhibit 29 for withdrawal of the written statement which remained to be adjudicated. Subsequently, after being impleaded as party the written statement below Exhibit 45 came to be filed and issues were framed on the basis of the said written statement. The fact remains that the subsequent written statement was taken on record and was construed as the written statement of the Petitioner and Respondent No.5 that is Defendant Nos.3 and 4. It is also not disputed that issues have been framed by taking into consideration the proposition of law and fact which were raised in the written statement below Exhibit 45.

9. In my opinion, at the stage when the first document came to be filed as a written statement as the Petitioner and the Respondent No.5 were not parties to the proceedings, the said document cannot be construed as written statement. It is only the subsequent to the impleadment of the parties as Defendants that a right accrues to the party to file their submission in defence to the plaint. This was done by the Petitioner and the Respondent No.5 after being impleaded as party. Neither the trial Court nor the parties at any point of time construed the first document filed as a written statement and treated the written statement filed below Exhibit 45 as the written statement

of the Petitioner and Respondent No.5. The position remains that there is no provision under the Code of Civil Procedure permitting the withdrawal of the written statement. However, in exercise of inherent powers of the Court under Section 151 of the Code of Civil Procedure it is open for the trial Court to not consider the first document as the written statement and to treat the written statement filed below Exhibit 45 as the written statement of Defendant Nos.3 and 4. In my opinion, the trial Court without considering the position that the Petitioner and the Respondent No.5 came to be impleaded subsequently has erroneously discarded the written statement filed after being impleaded as a party and has held that the purported written statement filed below Exhibit 14 will be treated as written statement.

10. In that view of the matter the impugned orders suffer from legal infirmity and deserves to be quashed and set aside. The written statement filed below Exhibit 45 to be treated as written statement of Defendant Nos.4 and 5.

11. The Writ Petition is allowed.

[Sharmila U. Deshmukh, J.]