



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

918 WRIT PETITION NO. 12082 OF 2018

Shaikh Manjur Shaikh Chand

VERSUS

Kaushalyabai Sukhlalji Bajaj

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Advocate for the Petitioner : Mr. Solanke Vinayak H.

Advocate for Respondent : Mr. A. N. Sikchi

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CORAM : R. M. JOSHI, J.

Dated : July 02, 2024

PER COURT :-

1. Petitioner/ original plaintiff takes exception to order dated 10/07/2018 whereby application filed for recasting of issue is rejected by the Trial Court.
2. Petitioner / plaintiff filed application for recasting of the issue by contending that in view of the averments made in the written statement, burden is required to be cast upon the defendants to prove that plaintiff has misused the signatures of defendant and created memorandum of understanding.
3. Learned Counsel for the petitioner submits that once such plea is raised by the defendant, it is necessary to frame issue to that effect and burden is required to be cast upon the defendant accordingly. This contention is opposed by the Counsel for respondent by pointing out the issues framed vide Exhibit 23 on 10/02/2016. According to him, issue No.1 is rightly framed casting burden upon the plaintiff to prove that there exists a memorandum of understanding between plaintiff and defendant. It is his submission that only after the plaintiff discharges the

said burden in view of the issue upon the defendant to prove otherwise.

4. It is settled position of law that burden of proof in a suit of proceeding lies on that person who would fail if no evidence at all given by either side. Here in this case, if the plaintiff fails to prove that there was a memorandum of understanding between him and defendant, the suit will fail. Thus, this court finds substance in the contention that the initial burden is on the plaintiff to prove his contention by leading evidence and only after he successfully discharges the same onus will shift on the defendant, and that defendant thereafter will be required to prove that the plaintiff misused her signatures. Thus, issue No.1 sufficiently takes care of contention of both sides. As such, there is no reason for causing interference in the impugned order. Hence, the petition is dismissed.

5. Learned Counsel for the respondent has drawn attention of the Court to the written statement wherein it is specifically pleaded that the defendant has never executed any memorandum of understanding, and thereafter, plea is raised about the alleged misuse of her signatures.

(R. M. JOSHI, J.)

vj gawade/-.