



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5556 OF 2024

Yuvraj Bhagvan ChaudhariPetitioner

VERSUS

Dilip Sukhdev Kumavat & anotherRespondents

Mr. U. S. Patil, Advocate for the Petitioner.
Mr. Y. A. Jadhav, Advocate for the Respondents.

CORAM : R. M. JOSHI, J.

DATE : 11th SEPTEMBER, 2025.

PER COURT :

1. Heard learned counsel for both sides.
2. Here in this case, peculiar situation has arisen when the Trial Court, by order dated 25.04.2023, has permitted the parties to lead evidence after framing of the following additional issues :-
 - 1) Whether the suit is within limitation ?
 - 2) Whether Plaintiff proves his readiness and willingness to perform his part of the contract ?
3. Pursuant to the said order, Plaintiff filed additional affidavit of evidence at Exhibit 145. Defendants raised objection with regard to the contents of the said affidavit and sought discardance

thereof. The learned Trial Court, by passing order below Exhibit 148 and 150, rejected the Application filed by Defendants however, discarded the affidavit Exhibit 145. While doing so, it is observed that the affidavit filed by the Plaintiff is not necessary to decide these two issues. It is further held that delay would be caused and the suit is pending for more than 8 years.

4. Learned counsel for Petitioner/Plaintiff submits that once additional issues are framed and leave is granted to the parties to adduce additional evidence, it was not open for the Trial Court to discard the affidavit of evidence.

5. Learned counsel for Respondents/Defendants contends that though additional affidavit is filed, there is repetition of contents in the previous affidavit or there is evidence sought to be adduced beyond pleadings. It is his submission that for this reason, the affidavit is rightly discarded by the Trial Court. Learned counsel for Respondents also submits that by filing additional affidavit, the earlier admissions are sought to be withdrawn.

6. Perusal of the impugned order however does not indicate that the affidavit has been discarded for the reason that it is beyond pleadings. Discardance of affidavit is solely on the ground that affidavit is not necessary for decision of these additional issues. This order is contrary to the order passed below Exhibit 133 dated 25.04.2023. The said order indicates that the parties were permitted to lead evidence on recasting of the issues. Insofar as the grievance sought to be raised by the Respondents/Defendants about evidence beyond pleadings is concerned, at appropriate stage of the suit, the said issue can be decided by the Court. Suffice it to say that after additional issues are framed, the parties are within their right to lead evidence on such additional issues. In such circumstances, the impugned order of discarding affidavit Exhibit 135 is set aside. The Trial Court to decide relevancy of the evidence at appropriate stage.

7. Insofar as the contention of Respondents about withdrawal of admission is concerned, the Trial Court to consider the said issue and decide the same at appropriate stage. Trial Court is directed to expedite the suit to dispose of preferably within a period of six months from today.

8. Petition is disposed of in above terms.

(R. M. JOSHI)
Judge

dyb