



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 844 OF 2018

Sau. Ahilyabai Kisan Nandude & others .. Petitioners

versus

Dattatraya Kisan Nandude & another .. Respondents

Mrs. Anjali Dube (Bajpai), Advocate for the Petitioners.

Mr. S. N. Gaikwad, Advocate holding for Mr. N. V. Gaware, Advocate
for Respondents.

CORAM : R. M. JOSHI, J.

DATE : 16th SEPTEMBER, 2025.

PER COURT :

1. By consent of both sides, heard finally at the stage of admission.

2. This Petition takes exception to the order passed below Exhibit 23 in Regular Civil Suit No. 134/2016 whereby the Trial Court has permitted Defendant No. 1 to file fresh written statement.

3. It is the case of the Petitioners that Petitioners filed suit being Regular Civil Suit No. 134/2016 for partition and possession of the suit properties. In response to the summons issued by the Trial Court, Defendant Nos. 1 to 4 filed common written statement vide Exhibit 16 on 26.08.2016. The written statement is either duly

signed or thumb impressed by respective Defendant. During the pendency of the suit, an Application came to be moved by Defendant No. 1 vide Exhibit 23 claiming that the previous written statement filed by him is not filed voluntarily and the same has been obtained by force, coercion and compelling him to put his thumb impression thereupon by Defendant No. 1. He denied to have engaged previous Advocate. After engaging new Advocate, a request was made to the Trial Court by Application Exhibit 23 for accepting fresh written statement. Since this Application came to be allowed, this Petition.

4. Learned counsel for the Petitioners submits that it is a settled position of law that the admission given in the written statement cannot be permitted to be retracted/withdrawn at subsequent point of time. She drew attention of the Court to the original written statement filed on record before the Trial Court and the averments made therein and a fresh written statement allowed to be filed by Trial Court. According to her, new written statement contains altogether different stand than the one taken in the previous written statement. It is thus argued that such withdrawal of admission is wholly impermissible and the Trial Court in most casual manner has accepted the case of the Defendant for filing fresh

written statement and hence this is a fit case for causing interference in the impugned order.

5. Learned counsel for the contesting Respondent supported the impugned order. It is his contention that when specific plea has been raised with regard to the thumb impression of Defendant being obtained on the written statement by force and coercion, it was always open for him to make an application to the Court for filing written statement afresh. It is his submission that in the facts of the case, the impugned order deserves no interference.

6. There cannot be any dispute made with regard to the preposition sought to be canvassed by learned counsel for Petitioners that no party is permitted to withdraw his admissions once made in the written statement. A question arises as to whether even otherwise there was any case made out by Defendant No. 1 to file a fresh written statement. There is no dispute about the fact that the written statement filed first in time before the Trial Court bears thumb impression of the contesting Respondent. Though it is sought to be contended now that the said thumb impression was obtained by force and coercion, no complaint of whatsoever nature has been made

either against the co-defendant or against the Advocate. Perusal of application Exhibit 23 shows that Defendant No. 1 claims that his thumb impressions are obtained by Defendant No. 3 on some papers forcibly and by coercion and this came to his knowledge recently. The contents of application itself are sufficient not to believe the correctness thereof. If some one's thumb impression is obtained by force, he would come to know about it then and there itself and not at subsequent point of time. The learned Trial Court ought to have given appropriate consideration to the said allegations, which are unconceivable on face of it. Needless to say that there is no supporting material in form of atleast a complaint against Defendant No. 3 and/or his Advocate.

7. Merely on the basis of allegations, if Courts start permitting the parties to file fresh written statement, that too without ascertaining the correctness thereof, it would lead abuse thereof by unscrupulous litigants, who would make such casual/unsubstantiated allegations to come out of previous admissions. The Courts are expected to be more careful while dealing with such requests.

8. Prima facie perusal of both written statements indicates that the written statement filed afresh is contrary to the one earlier filed on record and this amounts to withdrawal of admission given therein which is wholly impermissible in law. The Trial Court has committed error in not considering the fact that there was not even a simple complaint against the co-defendant or the Advocate of forcibly obtaining thumb impression of the contesting Respondent on the previous written statement. The Trial Court has readily accepted the contention of this Defendant without calling upon the Defendant to substantiate his case. In order to ensure that the purity of process of law is maintained, such apparently frivolous plea ought to have been rejected by Trial Court.

9. In the circumstances, the Petitioners succeed in making out a case for causing interference in the impugned order. Hence, Petition is allowed. Application Exhibit 23 stands dismissed.

(R. M. JOSHI)
Judge