
(2009) 07 BOM CK 0166

In the Bombay High Court

Case No : Writ Petition No. 5350 of 2008

Abhishek Umbarkar

APPELLANT

Vs

Prashant Vidyadharrao Deotale, Sau. Manikbai Umbarkar and
Shriram Umbarkar

RESPONDENT

Date of Decision : 09-07-2009

Acts Referred:

Citation : (2009) 07 BOM CK 0166

Hon'ble Judges : C.L. Pangarkar, J

Bench : Single Bench

Advocate : CS Kaptan, for the Appellant; SV Sohoni and KR Luley, for the Respondent

Final Decision : Allowed

Judgement

C.L. Pangarkar, J.—Rule. Rule is made returnable forthwith. Heard finally with consent of the parties.

2. This writ petition challenges the order dated 17/7/2008 passed by the Civil Judge, Senior Division on an application for permission by defendant No. 3 to file his additional written statement.

3. Petitioner is defendant No. 3 in special civil suit No. 50 of 2006. Respondent No. 1 has instituted a suit against the petitioner and respondents No. 2 & 3 for specific performance of contract. When the said suit was instituted, the petitioner was minor. He was therefore being represented by his mother Smt. Manikbai as guardian ad litem. There were three defendants in the suit. All of them had filed joint written statement in the suit. On attaining the majority, defendant No. 3 i.e. the present petitioner filed an application before the Court praying that he may be allowed to file separate written statement since he has attained the majority.

4. The learned Civil Judge has allowed the petitioner to file separate written statement along with counter claim. However, the learned Civil Judge while passing the order put restriction on the present petitioner that he shall not file

written statement superseding earlier written statement. It is this part of the order that is under challenge.

5. I have heard learned Counsel for the petitioner as well as the respondents. The learned Counsel for the petitioner submits that the petitioner has every right to file his separate written statement upon attaining majority.

6. In the decision reported in Venkataswami Naidu and Others Vs. The Uppilipalayam Vamana Vilasa Nidhi, Limited, Secretary, T. Krishnaswami Naidu, . the Madras High Court held that a minor defendant is not entitled on attaining majority to put in additional written statement without leave of Court. It is therefore obvious that with the leave of the Court, minor defendant is allowed to file separate written statement. Such a leave has already been granted and against that part of the order the plaintiff has not preferred any revision or writ petition. That part, therefore, assumes finality and the said part therefore need not be interfered into.

7. The only contention that is required to be considered is whether the defendant minor upon attaining majority, has right to put defence which may not be in consonance with the earlier written statement. It was contended that the defendant on attaining majority has no right to take different stand superseding the earlier written statement filed by the guardian on his behalf. This contention cannot be accepted. Every minor has a right to repudiate any action of the guardian upon attaining the majority by way of additional written statement. He has certainly a right to repudiate such action and to file his separate statement and his own defence which he may think appropriate. In this case particularly the minor on attaining majority has such right. If a minor has a right to challenge the alienation made by the guardian, there is no reason why he can resist such transfer to be effected soon after attaining majority.

8. In the above circumstances I find that the restriction, put by the learned Civil Judge that additional written statement should not contain statement superseding earlier statement should not be filed, is not correct. Further, it may be mentioned here that every defendant has right to take inconsistent defence in his written statement. If defendant has right to take inconsistent pleas, there is no reason why a minor upon attaining majority be restrained from filing written statement which may not be in consonance with the earlier written statement.

9. For the reasons stated above, the writ petition must be allowed. The order passed by the Civil Judge to the extent not allowing the petitioner to file written statement inconsistent with the earlier written statement is set aside.

10. Rule is made absolute. No order as to costs.