

**IN THE COURT OF SMALL CAUSES AT MUMBAI****ORDER BELOW EXHIBIT 60  
IN  
R.A.E. SUIT NO.1455 OF 2015  
(CNR : MHSCA2-002550-2015)**

Mrs. Shamsi Malek Malekpur

... Plaintiff

v/s

Pems Investment Pvt. Ltd.

... Defendant

**Coram : K. M. Jaisingani,  
Judge, C.R.No.15,  
Date : 16.08.2019****ORDER :**

1. By present application, the plaintiff prayed to expunge additional written statement of defendant and to return it to the defendant and to hold the directors of defendant liable for perjury.

2. In brief, the plaintiff has submitted that the defendant is defunct and by order of Registrar of Companies, it has been struck off since 01.11.2016. The defendant has filed its additional written statement after its becoming defunct. The directors of defendant were not empowered to act and appear on behalf of the company as it ceased to exist. Then also, by suppressing material facts, the directors of defendant have filed additional written statement. They have fraudulently acted on behalf of defendant company. Thus, the plaintiff prayed to expunge additional written statement of defendant and to return the same to the defendant. Also the plaintiff prayed to hold the directors of defendant liable for perjury.

3. By reply Exh.63, the defendant has denied entire contention of plaintiff. The defendant submitted that the defendant company is duly registered with Registrar of Companies. As per order passed by Hon'ble National Law Company Tribunal dated 15.03.2019, the defendant is registered company. Thus, the defendant prayed for rejecting the present application.

4. After reply by defendant, the plaintiff filed rejoinder Exh.62. The plaintiff submitted that the defendant has changed user of suit premises. The defendant has to defraud the plaintiff. For filling the lacuna in their defence, the defendant applied for revival of company to the Registrar of Companies. Thus, the plaintiff prayed to make this notice absolute.

5. Heard both sides. I have gone through contents of pleadings of both sides as well as case laws relied by plaintiff. Following are those case laws :

1. **AIR 1994 SC 853 S. P. Chengalvaraya Naidu (Dead) v/s. Jagannath (Dead) By L.Rs. ;**
2. **Judgment of Hon'ble Supreme Court in Criminal Appeal No.1406 of 2012 between Kishore Samrite v/s. State of U.P. & Ors. ;**
3. **Judgment of Hon'ble Supreme Court in Writ Petition (Civil) No.39 of 2006 dated 11.05.2011 between Amar Singh v/s. Union of India & Ors. ;**
4. **Judgment of Hon'ble Supreme Court in Civil Appeal No.5239 of 2002 dated 03.12.2009 between Dalip**

**Singh v/s. State of U.P. & Ors. ;**

- 5. Judgment of Hon'ble High Court Bombay in Civil Application No.2939 of 2017 in Writ Petition No.14039 of 2017 between Union of India v/s. Mr. Haresh V. Milani and anr. ;**
- 6. Short notes on judgment on Fraud / misleading the courts.**

6. The plaintiff has instituted present suit for eviction and possession. On 29.08.2016, the defendant has filed its written statement. As per order below Exh.30 dated 04.05.2018, the additional written statement filed by defendant is taken on record. As per contention of plaintiff, the defendant has become defunct and by order of Registrar of Companies, it has been struck off since 01.11.2016. The defendant has shown unawareness about the said order. The plaintiff has filed copy of master data, company master data and notice of striking off and dissolution. On perusal of said documents, it appears that the name of defendant company has been struck off by Registrar of Companies.

7. The defendant has submitted that it is duly registered with Registrar of Companies. The defendant has filed copy of order passed by Hon'ble National Company Law Tribunal in C.P. No.3675(MB)/2018 dated 15.03.2019. It appears that by the said order, Hon'ble National Company Law Tribunal has directed restoration of name of defendant company in the register of companies maintained by Registrar of Companies. It appears that as the present suit was pending, by the said

order, the restoration of name of defendant company has been allowed by Hon'ble National Company Law Tribunal. It appears that earlier the name of defendant company was struck off from the register of Companies and now it is directed to be restored. Even if, the defendant has filed its additional written statement on record though its name was struck off from that register, it does not make any difference. It also does not cause prejudice to the plaintiff. The defendant has every right to make defence in the suit. By ordering restoration of the name of defendant company, it is restored to its original status. Under such circumstances, it is not just and proper to expunge the additional written statement filed by the defendant.

8. The plaintiff has submitted that the defendant has suppressed material facts relating to defunct of the defendant company and therefore, the Directors of defendant have played fraud with the court. The learned advocate for the plaintiff submitted that as the defendant played fraud with the Court, they are liable for perjury. In support of his submission, he has relied on above cited authorities. All the cited authorities are in connection with fraud with Court and effect of suppression of material facts from the court. As against this, the learned advocate for the defendant submitted that no such fraud has been played by the defendant with the court. At this stage, it appears that the defendant has not informed the court about its becoming of defunct and striking off its name from the register of Company. But, the restoration of name of the company is already directed by the Competent Authority. There is no perjury or fraud on the part of the

defendant. Under such circumstances, the application is liable to be rejected. Hence, I pass following order :

**ORDER**

Application is rejected.

(K. M. Jaisingani)  
Judge, C.R.No.15  
16.08.2019

Dictated on : 16.08.2019  
Transcribed on : 16.08.2019  
Checked & signed on : 20.08.2019