

MHSN150014672020



(Laxmibai Ramchandra Kadam-4 V/s. Pritam Ramesh Kadam-3)

ORDER BELOW EXHIBIT 135 IN
SPECIAL CIVIL SUIT No.102/2020
{OLD SPECIAL CIVIL SUIT No.76/2017}

1. This is application filed by defendants for setting aside the order of issuance of summons dated 05/07/2019 against Adv. Umesh Dinkar Kolekar.
2. Perused application and say of plaintiffs. Heard learned counsel for both side.
3. It is the contentions of defendants that, this Court has issued witness summons to Adv. Umesh Dinkar Kolekar on request of plaintiffs and accordingly said Adv. Umesh Dinkar Kolekar is intending to give evidence against defendant No.1 without any written or oral express consent of defendant No.1. Adv. Umesh Kolekar along-with Adv. U. L. Patil were representing defendant No.1 in Regular Civil Suit No.114/2013 for number of years in respect of the suit property and they took instructions and documents from defendant No.1 for conducting the said suit. Therefore, Adv. Umesh Kolekar cannot depose or give evidence against defendant No.1 in respect of the suit property as per Section 126 of the Indian Evidence

Act. It is also against Professional Ethics and therefore defendants prayed to set aside the order of witness summons dated 05/07/2019 issued against Adv. Umesh Kolekar.

4. On the contrary, plaintiffs have resisted the application by submitting that, they have called the witness Adv. Umesh Kolekar for the purpose of proving the notice published by Adv. Umesh Kolekar (witness) for plaintiffs and defendants in newspaper and as such the same cannot be claimed as privileged communication as per Section 126 of the Indian Evidence Act. Thus, the application being not bona-fide, prayed to reject the same.

5. Considering the contentions of both sides and on perusal of record and citations relied upon by both parties, it appears that, plaintiffs have filed the present suit for specific performance of contract against defendants and after giving opportunity of hearing to defendants, as per order dated 05/07/2019 passed below application Exhibit 46, this Court has issued summons to witness Adv. Umesh Kolekar. In pursuance of the same, witness Adv. Umesh Kolekar has already produced the public notice dated 04/06/2015 published in newspaper at Sr.No.1 of list Exhibit 57. On perusal of the application Exhibit 46 and order thereon, it is seen that, plaintiffs have called the witness Adv. Umesh Kolekar for proving the public notice published by Adv. Umesh Kolekar for plaintiffs and defendants in newspaper dated 04/06/2015. Thus, the purpose of issuance of summons to Adv. Umesh Kolekar is only to prove the issuance of

public notice published in newspaper by Adv Umesh Kolekar on the information supplied by the plaintiffs and defendants. The purpose of issuance of summons to Adv. Umesh Kolekar is not to disclose any confidential communication made by defendant No.1 to his advocate. The public notice dated 04/06/2015 is already published in the newspaper. The very purpose of publishing notice in newspaper is to communicate the contents to all public. Therefore, there is nothing confidential in nature in the contents of the said published notice.

6. Thus, the said public notice produce on record prima-facie shows that it was published by Adv. Umesh Kolekar in newspaper on behalf of both plaintiff well as the defendants and therefore there was nothing confidential in the contents of the notice which in fact has been communicated to all public. The contents in the notice were no more confidential so as to claim privilege under Section 126 of the Indian Evidence Act. It receives support in the judgment of *P. G. Anantasayanam and Others V/s. Miriyala Sathiraju and Others reported in AIR 1998 Andhra Pradesh 335* wherein the the Hon'ble Andhra Pradesh High Court has observed that if advocate sought summoned to prove sending of notice to defendant and the contents of notice in no way confidential as already communicated, then claiming privilege under Section 126 of the Indian Evidence Act is not permissible.

7. Learned advocate for defendants relied upon the judgment of *Anil Vishnu Anturkar V/s. Chandrakumar Popatlal*

Baldota and others in Writ Petition No.3359/2015 dated 21/12/2022, wherein the Bombay High Court has quashed and set aside the impugned witness summons as the communication was a professional privileged communication in the nature of a legal opinion/advice given by the advocate to his client. However, as stated earlier in the present suit, the public notice dated 04/06/2015 is issued and published by witnesses Adv. Umesh Kolekar on behalf of plaintiffs as well as defendants in newspaper and there is nothing confidential in nature in the contents of the said notice. Therefore, the ratio laid down in the aforesaid citation relied upon by defendants is not applicable in present matter.

8. Thus, the calling witness Adv. Umesh Kolekar for proving the public notice, which is already published in newspaper does not come within the privileged communication as per Section 126 of the Indian Evidence Act. There is no ground to set aside the order of witness summons dated 05/07/2019 issued against Adv. Umesh Kolekar. Therefore, I found the application is devoid of merit. Hence, the application Exhibit 135 stands rejected.

Vita.
Date: 08/01/2025

(Dnyaneshwar S. Patale)
Jt. Civil Judge Senior Division, Vita.

Special Civil Suit No.102/2020

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(Order below Exhibit 135)

I affirm that, the contents of this P.D.F. file Judgment/Order are same, word to word, as per the original Judgment/Order.

Name of the Stenographer : S. P. Pethkar.

Court : Jt. Civil Judge Senior Division, Vita.

Judgment/Order signed by

the Presiding Officer on : 08/01/2025.

Judgment/Order uploaded on : 10/01/2025.