

ORDER ON MEMO FILED BY THE PLAINTIFFS

The plaintiffs have filed this suit seeking the relief of permanent injunction. After framing of issues, the 1st plaintiff has examined herself as PW-1 and got got marked documents at Ex.P.1 to 4. When the matter is set-down for further chief of Pw-1, the learned counsel for plaintiffs has filed memo seeking to discard the evidence of Pw-1 on the ground of her ill-health.

2. After receipt of memo the defendants have filed objection by contending that, the plaintiffs have not produced any documents about health condition of Pw-1. In order to suppress the true facts and to drag on the proceedings this memo is filed. Accordingly the defendants prays to reject the memo with cost.

3. The legal position governing the filing of examination-in-chief by way of an affidavit is well settled. It is by way of the amendments introduced in the Code of Civil Procedure, 1908 (hereinafter, "CPC") in 2002 that filing of the examination-in-chief by way of an affidavit was introduced. Prior to that, examination-in-chief was oral, followed by cross-examination and re-examination, if permitted. The purpose of introducing the provision for examination-in-chief by way of affidavit was to expedite the recording of evidence and to ensure that judicial time could be utilized more pragmatically.

4. The two provisions governing the contents of affidavits in evidence are Order XVIII Rule 4 CPC read with Order XIX Rule 3 CPC. The said provisions are set out below:

"ORDER XVIII Hearing of the suit and examination of witnesses ..

4. Recording of Evidence. - (1) In every case, the examination-in-chief of a witness shall be on affidavit and copies thereof shall be supplied to the opposite party by the party who calls him for evidence.

Provided that where documents are filed and the parties rely upon the documents, the proof of admissibility of such documents which are filed along with affidavit shall be subject to the orders of the Court.

...

ORDER XIX Affidavits ...

3. Matters to which affidavits shall be confined. - (1) Affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory

applications, on which statements of his belief may be admitted; provided that the grounds thereof are stated.

(2) The costs of every affidavit which shall unnecessarily set forth matters of hearsay or argumentative matter, or copies of or extracts from documents, shall (unless the Court otherwise directs) be paid by the party filing the same."

5. The very object of amending rule 4 of Order XVIII of the said Code is to ensure that there is a speedy trial.

6. Viewed in the backdrop of the above legal position, the plaintiff No.1 has filed her affidavit in chief and it was read and recorded after verification by this court. Therefore, when it has become part of evidence, it cannot be so discard for which there is no specific provision. There is absolutely no provision to discard a piece of evidence which has been admitted. The parties cannot lay their hand on Section 151 of the C.P.C. which is in respect of inherent powers of the court. In fact, the said section can be invoked in order to prevent abuse of process of the court and not to abuse it. After the affidavit of examination in chief of plaintiff No.1 was read and recorded, it had become part of the evidence and, therefore, such part of the evidence cannot be discarded. In *Banganga Co-Operative Housing Society v. Vasanti Gajanan Nerukar & others* [2015 (5) Bom.C.R 813], Hon'ble Bombay High Court has held that the affidavit cannot be withdrawn as it has become part of the record. Similarly, it cannot be discarded when it has become part of the record. In view of above discussion, this court proceed to pass the following:

ORDER

Memo filed by the plaintiffs is hereby rejected.

No order as to costs.

For further chief of PW-1.

Call on 24.01.2025

(SATHISHA. K.G.)
Prl. Civil Judge & JMFC.,
Nanjanagudu.