

Date: 02.01.2015

Orders regarding marking of documents

The advocate for the defendant has filed an application with a prayer to permit the defendant to mark the photo copy of Ex.P-1.

In the annexed affidavit the defendant contends that the plaintiff has filed this suit for specific performance and marked Ex.P-1. The Xerox copy of agreement dated 17.03.2011 is now to be marked by the defendant to prove the defence of the defendant that he signed a blank stamp paper and gave it to the plaintiff. Therefore he intends to mark the Xerox document.

To this application the counsel for the plaintiff filed objections that the defendant has produced the photo copy by manipulating the same by using some technics. Such a document cannot be marked because it is possible for creation of documents which could no be permitted. Therefore it is prayed to reject the marking of the said document.

Heard the arguments;

I have gone through the plaint and also written statement filed by the defendant. I have also perused the document that the defendant intends to the mark now which is a blank signed Xerox stamp paper. There are no contents in the Xerox document for being compared with Ex.P-1. If Xerox document produced by the defendant is permitted to be marked, it would cause greater injustice to the plaintiff because the blank Xerox paper at no time can be compared with any other document for the adjudication of this case. Learned counsel for the defendant has referred to a decision reported in AIR 2007 HC 1721. on perusal of the judgment of the Hon'ble Supreme court, It goes to show that the a Xerox document was marked as a secondary evidence by the trail court. That was challenged before the Hon'ble High Court where in that order of the trail court marking the Xerox document was set aside. At that stage the matter was taken to the Hon'ble Supreme court where an observation was made that a secondary evidence could be permitted it there is chance for the court to compare the

document with the original of the same. However in that case no foundation to lead secondary evidence was laid by the counsel and therefore the orders of the Hon'ble High court was upheld . Hence, If the principles laid down in the above decision is applied to the case on hand, the document now produced by the defendant cannot be marked because it cannot be compared with Ex.P-1 because Ex.P-1 contains certain averments which are not found in Xerox document. Moreover the burden is on the plaintiff to establish the execution of the agreement and also the passing of part consideration to the defendant. In these circumstances I do not find any grounds for granting permission to the defendant to produce the Xerox copy of the document. Hence, I pass the following;

ORDER

The prayer of the defendant for production and marking of the Xerox document is rejected.

Call on 12.01.2014

Addl. Senior Civil Judge,
Ramanagara.