

MHBU070006642016



**Order Below Application (Exh.142 ).**  
(Passed on 18.10.2023)

1. Perused application and Say (Exh. 145).
2. Here, the plaintiffs have moved present application for permitting its authorized person to lead evidence on their behalf. In the application, the plaintiffs have submitted that they have filed affidavit of examination-in-chief of the plaintiff no. 1 but, because of age factor and bodily infirmity, the witness is unable to remain present for cross- examination. For this reason, present application was moved by the plaintiffs for permitting them to lead evidence of its authorized person, Dipak Liladhar Patil as their witness. The defendant has strongly opposed the application on ground that the claim of incapability of the plaintiff no. 1 to attend the Court is not supported by any documentary proof. The defendant has further submitted that unless the plaintiff execute power-of-attorney in favour of its authorized person, such person cannot be allowed to lead evidence on behalf of the plaintiff. Further the defendant has pointed out if the plaintiff is unable to bring aforesaid witness, they can withdrawn the evidence given by way of affidavit. Apart from this, the defendant has also denied the fact that he has adopted any delay tactics to prolong the suit. On all these grounds, the defendant has prayed to reject the application.
3. Heard both sides.
4. Perused record. Record shows that previously the plaintiffs have filed affidavit of examination-in-chief of Shri Pankaj Shitoot

(PW 1) on record and some documents were proved during his further examination in chief. Record further shows that the suit was adjourned for cross examination and now, this application has been moved by the plaintiffs. Further, though the plaintiffs have not filed any documentary proof regarding ill health of the witness, this Court cannot overlook the fact that the witness is aging 80 years. If the witness is aging 80 years, he must be facing some health issues and it will be not proper to expect from the witness to file documents regarding his ill health.

5. Further, though the defendant has pointed out that the plaintiffs have to execute power-of-attorney in favour of his authorized person to adduce evidence, such claim do not seems to be relevant. The plaintiffs have already file its circular on record which authorizes said Dipak Patil to take necessary steps and to lead evidence in the suit. Therefore, I do not find any reason to refuse the permission merely on the ground that no power of attorney has been executed in favour of aforesaid witness.

6. Further, the defendant has relied upon **Ajay Avinash Solanke -vs- Mrs. Asha Umesh Yadav**, reported in **(2018) 2 Civil Courts 614**. I have gone through above case law minutely. In above case law, the original plaintiff has filed his affidavit of examination-in-chief and proved some documents. Thereafter, suit was adjourned for cross-examination and meantime, the plaintiff has died. Lateron, his LR's were brought on record. Subsequently, none of the parties appeared before the Court and the trial court has decreed the suit. Lateron, the judgment

and decree was challenged up to Hon'ble Bombay High Court. In appeal, Hon'ble Bombay High Court was pleased to dismiss the suit on the ground that the plaintiff has failed to prove his claim as the original plaintiff was not subjected to cross examination.

7. However, here, the situation is totally different. Here, though Pankaj Shitoot (PW 1) has filed his affidavit of examination-in-chief and he has proved some documents during his further examination, it is for the plaintiff to decide as to how it has to again prove those documents from the witness Dipak Patil to make them admissible as per the provisions of Evidence Act. If the plaintiff fails in this task, they may loose the suit. Therefore, though the defendant has relied upon above case law, it is not applicable to present application.

8. Hence, considering all above facts, I do not find any reason to refuse the permission sought by the plaintiffs through this application. I find merit in the application and therefore, I am passing following order-

**Order**

1. The application (Exh. 142) is hereby allowed.
2. The plaintiff is permitted to examine Dipak Liladhar Patil to adduce evidence on behalf of the plaintiffs.

Place : Shegaon.  
Date : 18.10.2023.

**Sd./-**  
(J.R Ghadge)  
Civil Judge Junior Division  
Shegaon, Dist. Buldana.

I, *K.S. Deshmukh*, Stenographer of C.J.J.D. & J.M.F.C.  
Court No.1, Shegaon affirm that the contents of this P.D.F. file  
order is correct word to word as per the Original Order.