

MHBU070006642016

**Order Below Application (Exh. 152).**

(Passed on 13.12.2023)

Perused application and Say (Exh. 153 ).

2. By this application, the plaintiff is praying to struck down the affidavit of Shri. Pankaj Shitut (PW 1) and for de-exhibiting the documents, which were proved during evidence of aforesaid witness. The application is opposed by the defendant on ground that there is no need to struck down the evidence or de-exhibiting the documents. It is also claimed that the application is not tenable and it was prayed to reject it.

3. Perused record. It shows that previously, the plaintiff has filed affidavit of examination-in-chief of Shri. Pankaj Shitut (PW 1) and some documents were proved during his further examination. Lateron, application (Exh.142) was moved by the plaintiff and it was prayed to permit its authorized person, Dipak Patil to adduce evidence on its behalf. That application was decided on merit and it was allowed. It appears that on that basis only, present application is moved by the defendant to struck down the affidavit of examination-in-chief of Pankaj Shitut (PW 1) and to de-exhibit the documents, which were exhibited during further examination of aforesaid witness.

4. However, though the defendant has moved present application, it can be said that it is baseless and devoid of merit. As stated above, Pankaj Shitut (PW 1) has just filed his affidavit of examination-in-chief and he has failed to make himself available for cross examination. Therefore, the affidavit of examination-in-chief of the witness cannot be treated as evidence and it cannot be read or consider while deciding the suit. Hence, striking down

said affidavit of examination-in-chief or keep it as it is do not make any difference.

5. Further, though the defendant is praying for de exhibiting the document, while deciding the application (Exh.142) Court has observed in the Order itself that **“though Pankaj Shitut (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 Deepak Patil to make them admissible as per provisions of Evidence Act. If the plaintiff failed in his task, they may loose the suit”**. If it is so, de exhibiting the document in question or keep them as it is also do not make any difference. For above reason, it can be said that the defendant has unnecessarily moved the application in hand. Since, the suit is old one, Court cannot expect from any party to move any unnecessary application and delay the suit on its decision. It appears that the defendant has moved this application with intention to prolong the suit and for this reason, it becomes necessary for the Court to impose heavy cost upon him. Hence, I am passing following order-

**Order**

1. The application (Exh. 152) is rejected.
2. The defendant is directed to pay cost of Rs. 1000/- to the plaintiff.

**Sd/-**

(J.R Ghadge)

Civil Judge Junior Division  
Shegaon, Dist. Buldana.

Place : Shegaon.  
Date : 13.12.2023.

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.