

MHBU070006642016



Order Below Application (Exh.155).

(Passed on 07.02.2024)

1. Perused the application and Say (Exh. 156).
2. Here, the defendant has prayed to decide the admissibility of the document before commencement of cross examination. In the application, the defendant has pointed out that Dipak Patil (PW 2) in his affidavit of examination-in-chief has described various exhibits and stated “be admitted in evidence”. In the application, the defendant has claimed that the admissibility of the document must be decided prior to commencement of the cross examination and inspite of this, Court has fixed the suit for cross examination. On such claim, present application was moved.
3. However, the plaintiff has opposed the application and it was pointed out that the defendant is moving baseless applications one after another just to prolong the suit. Further, in the say, the plaintiff has narrated as to how the documents relied upon by the plaintiff are admissible as per the provisions of Indian Evidence Act. By making such claim, it was tried to show that there is no ground for the defendant to raise objection regarding the admissibility of the document and there is not hurdle for cross examination of the witness. With such submission, it was prayed to reject the application with heavy compensatory cost.

4. Heard both sides.

5. Perused record. It shows that previously the defendant has moved application for de-exhibiting the documents, which were proved by Pankaj Shitut (PW 1) and struck down his affidavit of examination-in-chief. That application was rejected by this Court and in the order Court has observed 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”***.

6. Above observation is sufficient to understand that the plaintiff has to put the witness Dipak Patil (PW 2) in the witness box and once again refer the documents to the witness and get them proved as per the provisions of Indian Evidence Act. Now, during further examination, the plaintiff has opportunity to refer the documents to aforesaid witness and the defendant has opportunity to raise his objection, if the document cannot be proved from the witness. Thus, the admissibility of the document

can be decided during further examination of the witness Dipak Patil (PW 2). Further, the Roznama shows that the suit is fixed for further examination of Dipak Patil (PW 2) and not for cross examination. In spite of this, present application was moved by the defendant for deciding the admissibility of the documents and in concluding part of para no. 3, the defendant has submitted that “ **However, the Hon’ble Court has directly fixed for cross examination and not for deciding the admissibility of the document** ”. The statement so made is false and misleading as the suit is still fixed for further examination of the witness.

7. Further, the defendant has relied upon **Satish Janardhan Bhusari -vs- Ramesh Rambhau Bidkar** reported in **2019(3) ABR 628 (2020) 1 All MR 593, Shasibhai Jethalal Mehta and others -vs- Dr. Subhash Shankarrao Saoji** reported in **Writ Petition no. 800 of 2020, Manoramabai Amrutrao Deshmukh -vs- Laxman Atmaram Kathale** reported in **2005(2) Bom. C.R. 353, Prakash Cotton Mills Pvt. Ltd. -vs- Municipal Commissioner of Greater Bombay** reported in **AIR 1982 Bombay 387 and Muddasani Sarojana -vs- Muddasani Venkat Narsaiah** reported in **AIR 2007 Andhra Pradesh 50 (2007) 50 All INDCAS**. However, with due respect, above case laws are not applicable to this suit as the cross examination is not yet commenced and the suit is still fixed for further examination of witness. Thus, the application is premature. It appears that the defendant has unnecessarily moved present application just to delay the suit. The application is devoid of merit and it deserves to be rejected. Further, as the defendant has moved present application for no reason, it becomes necessary for the Court to impose some cost

upon him. Hence, I am passing following order-

Order

Application (Exh. 155) is hereby rejected with cost of
Rs. 1,500/- payable to plaintiff.

Place : Shegaon.
Date : 07.02.2024.

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.