Shri Aawaji Siddha Maharaj Nagari Sahakari Pat Sanstha, Jalgaon Jamod.
V/s
Sanjay Laxman Yeul

Order below Exh.142.

1. Perused application, say and record. Heard advocate of accused and complainant. Present application is filed by advocate of accused for directing the complainant to file on record alleged loan documents and by laws of the society. It is argued by advocate of accused that complainant has filed present complaint under section 138 of Negotiable Instrument Act. Alleged cheque is an amount of Rs.26,50,000/-. As per contention of complainant, the complainant has disburse cash credit loan limit of Rs.8,00,000/- in the year 2003 and said limit extended upto Rs.14,00,000/- in the year 2004 and the accused issued disputed cheque for arrears of Rs.26,50,000/- as debt amount. Complainant has filed on record cheque, memo, copy of notice, postal acknowledgement, statement of account and mortgage deed. Accused was moved number of applications at various occasion for getting loan case papers and other relevant documents for his perusal and for the confirmation of his legal liability. But the complainant denied to provide concern documents to accused. The complainant was requires to provide concern loan papers to the accused as well as filed in the case for best and

proper adjudication of the matter. As per section 118 of Negotiable Instrument Act there is presumption to the cheque and memo but at the same time there is right of rebuttal to the accused to prove that he is not legally liable to pay cheque amount. It is also argued by advocate of accused that for the purpose adjudication of the matter and also utilizing right of rebuttal to the accused it is necessary to direct complainant to file alleged documents on record. He lastly prayed for allowing application.

2. Advocate of complainant filed say and strongly opposed to the application contending that present application is filed by accused only with an intention to prolong matter. Complainant has already filed on record documents which are necessary to decide the case. It is vehemently argued by advocate of complainant that accused is not having right to compel the complainant to produce alleged documents on record. It is the sweet choice of the complainant to file those documents which are necessary to prove its case. It is also argued by advocate of complainant that if alleged documents are not filed by the complainant then complainant will face consequences. There is no provision which allowed accused to demand documents which are not filed by complainant. He lastly prayed for rejection of the application.

3. Present complaint case is filed by the complainant Patsanstha against accused for the offence punishable under section 138 of Negotiable Instrument Act. As per contention of advocate of accused the complainant has filed some documents, but following documents are necessary to be filed on record.

A) First application for loan of year 2003.
B) Promissory Notes.
C) Check List.
D) All agreements except Mortgaged deeds.
E) Resolution for loan sanction.
F) Second Loan Application of year 2004.
G) Promissory Notes of extended loan amount.
H) Check list of extended loan amount.
I) Resolution for extended loan amount.
J) Expenditure Vouchers of Recovery Proceeding till 27.7.2009.
K) Other expenditure Voucher than recover proceeding shown in account statement.
L) Surcharge Process fees Voucher.
M) Bye-laws of the Society.

4. It appears from record that complainant Patsanshta issued letter dated 24.9.2015 to one Laxman Yeul in respect of loan documents of the accused contenting that without payment of 50% amount they will not think on the application of demanding loan documents. As well

as complainant patsanstha appears to be issued letter to one Damodar Laxman Yeul on 25.10.2015 contending that they will not provide any copy of documents without payment 50% arrears of loan amount. Complainant has also appears to be issued letter to one Shriram Shyamrao Yeul on 4.11.2015 contending that they will not provide any documents without payment of 50% arrears of loan amount.

5. It is pertinent to note here that there is presumption as to negotiable instruments as per section 118 of Negotiable Instrument Act. There is also presumption in favour of the holder of cheque as per section 139 of Negotiable Instruments Act. It is also settled law that accused can rebut the presumption from documents of complainant and also from the cross examination of the witness of complainant. In the present case complainant has led evidence of its alleged authorised representative by way of filing affidavit on record. Now the case is for cross examination of the said representative. In the present case complainant is not ready to file alleged documents on record. When complainant is ready to face consequences of non filing of documents and it doesn't appears to the complainant that those alleged documents are not requires to be file on record to prove its contention then in my opinion at this stage directions cannot be given to the complainant to file alleged documents on record. Considering facts and

circumstances on record it appears to me that it is just and proper to grant liberty to the complainant for filing alleged documents inspite of rejecting or allowing present application. Hence, I pass following order.

: **<u>O R D E R</u>**:

Complainant is at liberty to file alleged documents on record before completion of cross examination of alleged witness no.1.

Sd/-

Jalgaon Jamod. (A. J. Fatale)
Date: 08/02/2016. Judicial Magistrate F.C.
Jalgaon Jamod.