

MHKO050014302019



ORDER BELOW EXH.52 IN
SPECIAL CIVIL SUIT NO.26/2019
(Passed on 20. 12. 2024)

This is an application for grant of permission for re-examination of PW1 Gopal (Exh.27) for the purpose of exhibiting some documents.

02. Perused the application. Defendant has failed to file his reply despite of grant of ample opportunity to that effect. Hence, application is proceeded further without the reply of defendant. Heard learned counsel for plaintiff. Defendant and his learned counsel are absent though matter is repeatedly called out.

03. Learned counsel for the plaintiff submitted that at the time of recording evidence of PW1 Gopal (Exh.27) the original documents i.e. cheques, cheque return memos and acknowledgment of receipt of notice were filed in the criminal case filed by the plaintiff against the defendant. Therefore, at that time plaintiff could not produce those documents in the present matter. However, plaintiff had already produced the photocopies of those documents on record and those documents are already referred in the affidavit in lieu of examination in chief of plaintiff. He further submitted that plaintiff's case is mainly based upon the above-said cheques and the cheque return memos. As such, non exhibiting the above-said documents would cause serious

prejudice to the rights of plaintiff. Hence, it is prayed to grant permission to re-examine the PW1 Gopal for the purpose of exhibiting above-said documents.

04. Perusal of affidavit in lieu of examination in chief of PW1 Gopal shows that the above-said documents are referred in his said affidavit along with the prayer for exhibiting those documents. However, no finding regarding exhibition or non exhibition of those documents appears to be recorded by my learned predecessor and the matter was posted for cross examination of PW1 Gopal. It is pertinent to note that present suit is based upon the cheques, the cheque return memos and the acknowledge receipt. It is also significant to note that photocopies of above-said documents were already produced on record. Moreover, defendant has also admitted the execution of above-said cheques in his written statement. Therefore, no prejudice would be caused to the defendant, if the matter is relegated to the stage of further examination of PW1 Gopal (Exh.27). In these circumstances, it will be just and proper to grant permission to the plaintiff to re-examine himself for the purpose of proving those documents along with permission to the defendant to cross examine him in respect of above-said documents by invoking the power under Order 18 Rule 17 of the Code of Civil Procedure, 1908. Hence, I pass the following order :

ORDER

- 1) Application at Exhibit No.52 is hereby allowed.

- 2) Permission to re-examine PW1 Gopal (Exh.27) in respect of documents referred to in the present application is allowed.
- 3) Defendant is permitted to cross examine PW1 Gopal (Exh.27) in respect of above-said documents after recording further examination in chief of PW1 Gopal.
- 4) Cost in cause.

Ichalkaranji

Date :- 20. 12. 2024

(Hitendra Urmila Anilkumar Wani)

Civil Judge Senior Division, Ichalkaranji