



Order below Exh.113 in RCS No.261/2016

Vilas Vs. Shivram

By this application plaintiffs have requested for granting permission to record further chief examination of PW No.1 at **Exh.92**, on the grounds mentioned in the application. The contents of application in short are:- that vide **Exh.92** examination in chief of PW No.1 dated 19/12/2023 came to be filed and further chief examination was started and the document under Exh.63/3 and 'Kabuliyatnama' vide Exh.93 were exhibited. Due to lack of time the further chief examination came to be deferred. That on 17/01/2024 the suit came to be transferred to the Court of Jt. CJSD, Nilanga and the plaintiffs filed additional chief examination under **Exh.92** along with. That additional chief examination under **Exh.92** along with is properly considered and further chief examination and cross examination is recorded.

2. That examination in chief of PW No.1 at **Exh.92** is ignored due to misunderstanding and due to transfer of file to the Court of Jt.CJSD, Nilanga. It is necessary to record further chief examination and put exhibit numbers on the documents submitted by the witness, which are private in nature. The documents are material and it is necessary to exhibit them for proper adjudication. Hence, the application. Defendants have raised objection on several grounds and requested to reject the application.

3. Perused application and say. Heard both the sides. Both of them have submitted in the line of their application and say respectively. Record shows that plaintiffs have filed this suit for specific performance of contract and perpetual injunction. Defendant No.1 has filed his WS at **Exh.18** and contested the claim. Defendant No.2 has filed her WS at **Exh.33**. Issues are framed at **Exh.58**. Plaintiffs have examined plaintiff No.1 as PW No.1 at **Exh.92** by filing his affidavit of chief examination on 19/12/2023. His further chief examination came to be recorded and due to paucity of time, it came to be adjourned.

4. It is matter of record that in the meantime, the matter came to be transferred in the Court of Jt.CJSD, Nilanga and on 17/01/2024 an application at **Exh.94** was moved by plaintiffs and the Court of Jt. CJSD, Nilanga allowed the said application on the same day and permitted the

plaintiffs to file supplementary affidavit of chief examination of plaintiff No.1. Thereafter, learned advocate for plaintiffs recorded further chief examination of plaintiff No.1 at **Exh.92** (supplementary) and on the same day i.e. on 17/01/2024 the cross examination by defendants came to be recorded at **Exh.92** (suppl.).

5. From the contents of application it seems that the plaintiffs got themselves confused and have filed present application. Already on 17/01/2024 when the supplementary affidavit of chief examination of plaintiff No.1 was taken on record and when learned advocate for plaintiffs has recorded further chief examination at **Exh.92** (Suppl.), then in that case nothing remains to be recorded. It seems to be misconstrued by the plaintiffs that the affidavit of chief examination of plaintiff No.1 at **Exh.92** which came to be filed on 19/12/2023 has remained as it is but infact **Exh.92** (Suppl.) it will be treated as part and parcel of **Exh.92**. It seems that plaintiffs wants to recall and re-examine plaintiff No.1 which is not permissible in the eyes of law. The power to recall and re-examine under Order 18 Rule 17 CPC lies with the Court only. For these reasons, the application seems to be devoid of merits and is liable to be rejected. Accordingly, I pass following order:-

ORDER

1. Application is rejected.
2. No order as to costs.

Date :16/12/2024

(Ashish B. Marlecha)
Civil Judge (Sr.Dn.),
Nilanga, Dist. Latur.