

ULP No. 08/2015

(CNR No. MHL340000192015)

Waman S/o. Uddhaoji Ataram

VERSUS

The Chief Executive Officer, Chandrapur District Supervision Co-operative Society Ltd., Chandrapur + 01.

ORDER BELOW EXH. U-71

(Passed on 03.07.2025)

The original complaint is filed for setting aside dismissal/termination order of the complainant along with other prayers for consequential reliefs. The present application is moved on behalf of the complainant for discarding evidence of the respondent's witness nos. 1 & 2.

2] Perused application and say.

3] Heard both sides.

4] The complainant's submission in short is that, the evidence of the witnesses who are called upon summons required to be recorded directly on oath before the court, and filing of their affidavit in lieu of evidence is not at all permissible in the eyes of law. On this very submission the complainant has prayed for discarding affidavit in lieu of evidence filed by the respondent's witness nos. 1 and 2.

5] The respondents through their Ld. Adv. strongly opposed application and categorically denied contents of the application and prayed for rejection of the same.

6] The question for consideration before the court is; whether a witness called by the party on summons is precluded from filing affidavit in lieu of evidence? The Ld. Adv. For the

complainant argued that it is not permissible in the eyes of law to allow filing of affidavit in case of a witness who is called upon to appear by the party on summons. So far submission made by the Ld. Adv. For the complainant is concerned, it appears to be baseless. No provisions under the Code of Civil Procedure debar any party or his witness from filing evidence on the basis of affidavit in lieu of evidence. If the provisions of Order 18 Rule 4 of the Code of Civil Procedure are considered, at very inception of the said provision, it is made clear that in every case the examination in chief of a witness shall be on affidavit and copies thereof shall be supplied to the opposite party. There is nothing under Order 18 of the Code of Civil Procedure which prohibits a party from leading evidence on affidavits.

7] The Ld. Adv. for the respondents has relied upon the judgment of the Hon'ble High Court in the case of **V. Rama Naidu and another Vs. Smt. V. Ramadevi Civil Revision Petition No. 6089/2016 decided on 31.01.2018**. In this judgment the Hon'ble High Court in paragraph- 7 of its judgment has given reference of the decision of the Hon'ble Apex Court in Salems Advocates Bar Association Case reported in AIR 2003 SC 189. In the said judgment, the Hon'ble Apex Court while referring to the provision of Order 18 Rule 4 (1) of Code of Civil Procedure has held that Order 18 Rule 4(1) applies to a case where a party to a suit without applying for summoning brings any witness to give evidence or produce any document, examination in chief of such witness not to be recorded in court but shall be in the form of an affidavit. Whereas, a witness is summoned, the court can direct to file affidavit or can give option to the witness either to file affidavit or to be present in court for

his examination and the court can even record evidence in part and direct court commissioner to record in part. Considering above interpretation of Order 18 Rule 4(1) of the Code of Civil Procedure, it is clearly seen that there is no bar for a witness called upon summons to lead evidence on affidavit.

8] It is also pertinent to note that filing of affidavit in lieu of evidence of the parties and their witnesses saves the time of the court and the matter can proceed faster. There is no express or implied bar for recording evidence of the witness in the form of affidavit. The discretion lies with the court in case of a summons witness, whether he shall be directly examined or he may be allowed to lead evidence in the form of affidavit. The respondents have already filed affidavit of witnesses on record instead of examining them before the Court. When the evidence in lie of affidavits are field on record, there should be reasonable excuse to discard their's testimonies and to call upon them to give evidence in open court in person oath. I do not find any sufficient reason to discard evidence of the respondent's witnesses.

9] The another grievance raised by the Ld . Adv. For the complainant is that the witnesses have deposed the facts which are not related to them. If such is the position in the present case, the value and effect of the evidence given by the witness will be adjudged on merit after cross examination. Admittedly, the complainant's advocate will have an opportunity to cross examine the respondent's witnesses, therefore, there is no meaning in discarding evidence of the respondents' witness. It is also not permissible in the eyes of law to discard evidence of the witness only for the reason that he has given such evidence on

affidavit. In these facts and circumstances, I am of the considered opinion that no case is made out to discard evidence of the respondents' witness. Hence, following order is passed.

O R D E R

- 1] Application stands rejected.
- 2] No order as to costs.

Sd/-
(A. D. Tidke)
Judge,

Date : 03.07.2025

Labour Court, Chandrapur.