

ORDER BELOW EXH. 69 IN R.C.S. NO. 27/2011
(CNR No. MHNS-2000-0021-2011)

1. This is an application filed by the defendants seeking permission to discard the affidavit in lieu of examination-in-chief filed earlier on the last date of hearing of the witness and to allow the filing of a fresh affidavit in lieu of examination-in-chief.
2. It is the contention of the defendants that the affidavit presently on record of witness namely Shivaji Guman Darade was inadvertently filed in this proceeding and was actually meant to be filed in another matter, i.e., R.C.S. No. 263/2010. The defendant submits that the affidavit is not in consonance with the pleadings in the written statement and therefore requests liberty to substitute it with a corrected affidavit.
3. The application is strongly opposed by the plaintiff. Learned Advocate for the plaintiff submits that the affidavit was filed four years ago, and no provision exists under the Code of Civil Procedure to cancel or substitute an affidavit in evidence. It is further submitted that permitting the defendants to substitute the affidavit at this stage would amount to allowing him to alter his evidence after realizing its adverse effect—especially since the witness has admitted the plaintiff's possession in the existing affidavit.
4. Heard both learned advocates. Perused the record.
5. It reveals from the record that the affidavit filed by the defendant's witness namely Shivaji Guman Darade is not fully in line with the written statement of the defendants. As per the submission of the learned advocate for the defendants, the use of the term "plaintiff" instead of "defendant" in the context of possession is an inadvertent error.

6. While the CPC does not contain any express provision allowing a party to *discard* and *re-file* an affidavit in evidence, the court does have inherent powers under Section 151 of the CPC to permit such course in the interest of justice, provided it does not prejudice the opposing party or cause abuse of the process of the court.
7. In the present case, the affidavit has not yet been tested through cross-examination. The right of cross-examination remains unaffected, and the plaintiff retains the opportunity to challenge any contradictions or admissions during that stage. Moreover, the defendants are seeking correction at the stage of leading evidence and not at the stage of arguments or after the closure of evidence.
8. In light of the above, and considering that the error is pleaded to be inadvertent, and in the interest of justice and fair trial, it would be proper to allow the defendants to file a fresh affidavit in lieu of examination-in-chief.

ORDER

1. The application at Exh. 69 is allowed.
2. The affidavit in lieu of examination in chief (Exh. 54) is discarded.
3. The affidavit in lieu of examination-in-chief filed by the witness, namely Shivaji Guman Darade, is read and recorded.
4. The defendants to bear the cost of the present application.

Date :- 11/07/2025.

(R. R. Jadhav)

2nd Jt. Civil Judge J.D., Sinnar.

CERTIFICATE

I affirm that, the contents of this PDF file of Order/Judgment/Deposition are same word to word as per the original Order/Judgment/Deposition.

Name of Stenographer	: S. M. Morankar
Court	: 2 nd Jt. Civil Judge J. D., Sinnar
Date	: 11/07/2025
Order signed by the Presiding Officer	: 11/07/2025
Order Uploaded on	: 15/07/2025