



Order below Exh. 01 in R.C.S. No. 18/2020
(CNR No. MHRT080001882020)

Present suit is pending for evidence. Power-of-Attorney Holder of the plaintiff bank Shri. Mukund Khandekar has filed his affidavit in lieu of examination-in-chief. It is at Exh. 29. Therein he has referred the documents which he has produced on record as per list at Exh. 05. One of the documents so produced is copy of power of attorney.

02. Learned advocate for the plaintiff Shri. K. S. Sahastrabuddhe has submitted that, as the formal contents of the documents are referred in the evidence affidavit, the documents may be admitted in evidence.

03. Before the learned advocate could complete his submissions, in the beginning itself, this Court has raised a query as to how the photocopy of Power-of-Attorney can be admitted in evidence?

04. Learned advocate has submitted that the photocopy is verified by the Assistant Superintendent of this Court. Thus, according to him, such copy can be admitted in evidence. He submitted that, the plaintiff bank has instituted number of suits like the present suit. About 55 of such suits are pending in this Court only. Thus, the original document cannot be produced in any one suit. As such, in the circumstances, photocopy of the document may be admitted in evidence.

05. Pertinently, section 61 of the Indian Evidence Act says that the contents of documents may be proved either by primary or by secondary evidence. 'Secondary evidence' is defined by section 63 of the Indian Evidence Act. Section 65 of the Evidence Act provides for the cases in which secondary evidence relating to documents may be given. Copy of a document cannot be accepted as secondary evidence only because it is verified by Assistant Superintendent of the Court. Only those documents which fall under either of the clauses of section 63 can be called as secondary evidence. Thus, only because photocopy of Power-of-Attorney is verified by Assistant Superintendent, it cannot be accepted as secondary evidence.

06. Moreover, the provision of section 4 of the Powers-of-Attorney Act, 1882, need to be noted. It reads as follows -

4. Deposit of original instruments creating powers-of-attorney.-

(a) An instrument creating a power-of-attorney, its execution being verified by affidavit, statutory declaration or other sufficient evidence, may, with the affidavit or declaration, if any, be deposited in the High Court or District Court within the local limits of whose jurisdiction the instrument may be.

(b) A separate file of instruments so deposited shall be kept; and any person May search that file, and inspect every instrument so deposited; and a certified copy

thereof shall be delivered out to him on request.

(c) A copy of an instrument so deposited may be presented at the office and may be stamped or marked as a certified copy, and, when so stamped or marked, shall become and be a certified copy.

(d) A certified copy of an instrument so deposited shall, without further proof, be sufficient evidence of the contents of the instrument and of the deposit thereof in the High Court or District Court.

(e) The High Court may, from time to time, make rules for the purposes of this section, and prescribing, with the concurrence of the State Government, the fees to be taken under clauses (a), (b) and (c).

(g) This section applies to instruments creating powers-of-attorney executed either before or after this Act comes into force.

07. Reading of the aforesaid provision clearly shows that the legislature has taken care of the situation that a POA Holder may be required to produce the document of Power-of-Attorney in number of proceedings and he may not be then able to produce the original (primary evidence) in all the proceedings. Thus, section 4 as quoted above clearly says that the document of Power-of-Attorney be deposited in the High Court or in the District Court within local limits of whose jurisdiction the instrument may be. Further, certified copy of an instrument so deposited shall be the sufficient evidence of the contents of the instrument.

08. Thus, when there is a Power-of-Attorney, the original be produced. If the Holder of POA is unable to produce the original as he is required to produce the same in different proceedings, he shall follow the procedure as contemplated by section 4 of the Act.

09. As such, the photocopy of POA produced by the plaintiff cannot be admitted in evidence.

10. At this stage, learned advocate for the plaintiff has sought time to take the appropriate steps. Thus, the matter is adjourned for arguments on the point of admissibility of other documents in evidence. Ordered accordingly.

Date :- 10/05/2024

(B. D. Tare)
Civil Judge (J.D.), Deorukh.

- : C E R T I F I C A T E : -

(Judgment/order in R.C.S No. 18/2020)

I affirm that the contents of this Pdf file order are same words as per original order.

Name of Stenographer	: - S. A. Bhale
Court Name	: - The Court of Civil Judge (J.D.) & Judicial Magistrate F.C., Devrukh
Date	: - 10/05/2024
order signed by PO. on	: - 10/05/2024
order uploaded on	: - 10/05/2024