

ORDER BELOW EXH. 141 IN R.C.S. NO. 104/2005
CNR-No-MH-SI-06-000134-2003

1. By this application, defendants have prayed to call upon plaintiff to state whether the xerox copy of notice dated 01.07.2002 given to defendant No. 1 and 2 under the signature of their Ld. counsel is admitted to him. In case if this xerox copy is admitted to him, then to exhibit this document and treat it as secondary evidence. In case if it is not admitted, then to produce the original notice in the possession of plaintiff of which they have already given notice under Section 66 of the Indian Evidence Act and Order XII Rule 8 of the Civil Procedure Code.
2. Plaintiff by his say resisted this application on the ground that defendant has not adduced evidence in their testimony about loss of document. It is contended that in the absence of such evidence, secondary evidence can not be invoked. Saying that, there is variance in the date of document, it is prayed to reject it with heavy cost.
3. Heard Ld. Counsel of both the parties. Perused record.
4. This is a suit for possession, mens profit and for compensation under Maharashtra Rent Control Act on the ground that the very purpose for which suit premises was let for running a Saw mill has been declared as illegal by the circular of the Government. From the contention of the parties, it is clear that defendants are seeking to prove the notice dated 01.07.2002 and its office copy is not in their possession. From the say of plaintiff it is crystal clear that the xerox copy of notice alleged to be produced by defendants is not admitted to plaintiff and he is not admitting the receipt of such notice. In that case defendants needs to lead secondary evidence thereof. Earlier, permission to lead secondary evidence needs to be sought. However

no such application is necessary as per the ratio laid down by their Lordship in the case of **Motiram Ramji Aadhe Vs. Yogita Motiram Aadhe in Criminal Writ Petition No. 132/2019 decided on 18.07.2019.** In view this ratio laid down in case cited supra, I pass the following order.

-: ORDER :-

1. The defendants are hereby directed to follow the procedure for leading secondary evidence of the disputed notice.
2. With the above direction, this application is disposed off.
2. Case be proceeded further.

Date :13/07/2020.

(Smt.R.R.Bedagkar)
Civil Judge (Junior Division),
Sawantwadi.