

Order passed below Exh. 175 in Spc.C.S. No. 32/2007
(Vikramsingh Deshmukh, etc. V/s. Diliprao Shinde, etc.)
CNR : MHSN05-001445-2007

Plaintiffs have filed the present application for permission to file supplementary affidavit of examination in chief. They submitted that, defendant No. 4 has got executed false document and such copies are filed with list Exh. 3. However, inadvertently submissions in respect of these documents were not incorporated in the earlier affidavit in lieu of examination in chief. So now the plaintiffs are filing supplementary affidavit only to that extent and the same be taken on record.

2. Defendant Nos. 2, 3 and 5 filed say and objected the application. They stated that present witness has no personal knowledge of the transactions and the documents. He is deposing on hearsay knowledge. Hence he cannot be permitted to file such supplementary affidavit. Hence this application be rejected.

3. Heard both the Ld. advocates at length.

4. Original plaintiff had filed the present suit for declaration and perpetual injunction. After the death of original plaintiff, his legal representatives have been substituted. There are certain amendments in the plaint and the defendants have filed their respective written statements. My Ld. Predecessor has framed issues at Exh. 73. One of the legal representatives i.e. Rajsingh Deshmukh has filed his affidavit in lieu of examination in chief at Exh. 173 on 13.12.2019. While the matter was for cross-examination, this application came to be filed.

5. The main objection of the defendants appears to be the

competence of this witness to depose in relation to the subject matter. It has been stated that the witness has no personal knowledge. However, this aspect is purely of merit and cannot be decided at threshold. His testimony and its admissibility can be decided only at the final stage. So this cannot be the reason. Besides another objection is about want of provision to file such supplementary affidavit. Order XVIII, Rule 3 of the Code of Civil Procedure requires the examination in chief of the witness only on affidavit in every case. Now the plaintiffs have missed some aspects in the affidavit filed at Exh. 173. Such mistakes are bound to occur and they cannot be perpetuated on technical grounds. Hence the order follows,

ORDER

1. Application is allowed.
2. The enclosed supplementary affidavit is taken on record and be kept with original affidavit at Exh. 173.
3. Parties to proceed with cross-examination on next date.

Islampur
Date: 18.03.2021

(Abhijit R. Solapure)
Civil Judge Senior Division,
Islampur