

**ORDER BELOW EXH. 1**

1. This is an application filed by defendants no. 1 to 3 in view of provisions of Order 39 rule 11 (1) of the Code of Civil Procedure along with Section 151 of the Code of Civil Procedure.
  
2. It is contention of the defendants that, these defendants have filed application below Exh. 32 on 10/10/2011 contending that the original document is not on record and so, copy of the said document cannot be read in evidence. On 12/10/2018, Exh. 32 was partly allowed and in view of provisions of Order 7 rule 14 sub rule 2 of the Code of Civil Procedure, this court has directed the plaintiff to produce document, thereby impounding the said document. In view of order of the court, it is the duty of the plaintiff to produce the document, however, the plaintiff has not produced the same. However, taking disadvantage of the fact that, no time limit has been set by the court to produce the document, on 17/11/2018 false opinion has been provided by the plaintiff taking contention that, the alleged document is with regard of R. T. S case and they will produce it when they get it. This information provided by the plaintiff is absolutely wrong and there is no such kind of case is pending. The only intention of the plaintiff is to prolong the matter and this plaintiff has not followed the order of the court. This suit is filed in the year 2011 and at the time of framing of issues, it was the responsibility of the plaintiff to produce the document on which the plaintiff is relies. On 12/10/2018, the court has passed order to produce the document,

however, the plaintiff has not obeyed the order of the court and thereby disobeyed the court order. So, it is requested that in view of provisions of order 39 rule 11 (1) r/w. Section 151 of the Code of Civil Procedure, the suit of the plaintiff be dismissed.

3. The plaintiff has filed say to the application and contested the application on the ground that, the application is not maintainable as there are no signatures of defendants no. 1 to 3 in the said application. The application is not supported by the affidavit. The plaintiff has contended that that document has been produced in another proceeding and they are going to produce the same as soon as they get it. The document is not in the possession of the plaintiff and so, it has become impossible to plaintiff to produce the same. If the plaintiff doesn't produce the document, there is certainly provisions to draw adverse inference against the plaintiff. However, the prayer of the defendant to dismiss the suit on the ground that the suit is not maintainable and illegal. Original plaintiff is denied and his legal heirs are brought on record and they are intending to produce the document after taking search of it and considering all these aspects, it is requested to reject the application.

4. Perused application and say filed by the plaintiff. Heard concerned advocates of the plaintiff and defendant.

5. This is the application filed under Order 39 rule 11 (1) of the Code of Civil Procedure, which is Maharashtra State Amendment, thereby the court is empowered to dismiss the suit o

or strike out the defence if any person disobeys the orders of the court to do or not to do things during the pendency of the suit or proceeding or making breach of undertaking by any person during pendency of the proceeding. As far as the present facts are considered, this court has at Exh. 32 passed order and thereby partly allowed the application and prayer of the defendant to reject the plaint under Order VII rule 11 of the Code of Civil Procedure is rejected. Now, if the order of the court below Exh. 32 is perused, the court has directed the plaintiff to produce the original agreement dated 16/12/2001, so that it can be impounded to Sub Registrar Office for the payment of sufficient stamp duty. The order has been passed on 12/10/2018 and since then, till today, the said document has not been produced on record.

6. If say filed by the plaintiff to the said application is perused, it is said that document is not in their possession. Original plaintiff is dead and they are searched for it and it is given in another proceeding. The plaintiff has pleaded that the document is not in their possession and they are taking search of it. Considering this aspect, it is clear that, the plaintiffs are not intentional disobeying the order. So also, it is settled principles of law that, the plaintiffs should produced the document on which he relied. In case the plaintiff doesn't produce original document, definitely the plaintiff shall face its consequence and if this aspect is considered, even if the plaintiff has not produced the document in time, definitely adverse inference can be drawn against the plaintiff. Considering these facts and circumstances of the case, it

is not the situation in this case in which the discretion under Order 39 Rule 11 of the Code of Civil Procedure should be used by the court.

7. On behalf of defendants, two rulings have been referred in (2004) 106 BOMLR 816, *Bhimrao Laxmanrao Nihare V/s. Natwarlal Ratansi Thakkar*. If the facts of the present case before the Hon'ble Bombay High Court is perused, the Hon'ble Bombay High Court has confirmed the order of the Trial Court on the ground that, in spite of directions, the tenant applicant had not deposited the amount of rent. The suit is filed by tenant against the landlord for injunction and in such peculiar facts and circumstances of the case, the Hon'ble Bombay High Court has held that, the trial court has rightly dismissed the plaint. If the facts of the present case are perused, so is not the situation in this case and so, with my humble opinion, the plaintiff shall not get benefit of this authority of the Hon'ble Bombay High Court.

8. One more authority has been cited by the defendants of the Hon'ble Bombay High Court in *M/s. Allied Feromelt Pvt Ltd. V/s. M.S.E.B.,* wherein, it is seen that, citation reference cannot be made out as there is not clear particulars in respect of the said citation. However, if this ruling is considered, the defendant shall not get the benefit of this ruling, because facts are very different and in the rulings before the Hon'ble Bombay High Court, the Supreme court had ordered the concerned parties not to encash the security or bank guarantee and the Hon'ble Supreme Court order was not followed. So facts being different, I am of the

humble opinion that, the defendant shall not get the benefit of this authority as well. As the defendants can argue on this point or take benefit of said fact that original document has not been produced in spite of direction of the court and adverse inference may be draw. Considering this aspect, at this stage by using power under order 39 rule 11 of the Code of Civil Procedure, it would not be proper to dismiss the suit at all. Hence, the following order.

**ORDER**

Application below Exh. 131 is rejected.

Date : 26/02/2019

( S. T. Shinde )

4th Jt. Civil Judge S. D., Pandharpur.

## C E R T I F I C A T E

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

a	Name of the Stenographer	: P. N. Kanaki.
b	Court	: 4th Jt. C.J.S.D.& A.C.J.M, Pandharpur.
c	Date of Order	: 26/02/2019
d	Order signed by P.O. on	: 26/02/2019
e	Order uploaded on	: 06/03/2019