

Order Below Exh.79

The plaintiff has filed this application to permit him to lead secondary evidence.

2. He submitted that, present suit is filed for possession and mesne profit. The plaintiff in this case had summoned to the concerned person of Pandharpur Nagarpalika to appear and produce notices as per Section 195 of the Maharashtra Municipal Corporation Act, 1965. But the said witness of Nagarpalika after appearance filed an affidavit that the notices sought by the plaintiff in this case are very old and cannot be found even after searching for them. In such a situation, the plaintiff has sought permission to produce secondary copies of the said notices. Accordingly, he prayed to grant the permission to lead secondary evidence of the alleged notices under Section 58 of the Bharatiya Saksha Adhiniyam, 2023.

3. The defendant has filed say on backleaf of the application and submitted that as sought by the plaintiff secondary evidence is in respect of notices. The said notices were given by Nagarparishad. The Nagarparishad is having outward and barnishi register. Therefore, in absence of verification of the register secondary evidence cannot be permitted to produce by the plaintiff.

4. Perused the application, record and the documents on the record. It appears that, the plaintiff has filed this suit for possession and mesne profit. The suit is kept for evidence of the plaintiff. The advocate of the plaintiff has filed application to issue

witness summon to the concerned person of Nagarparishad to produce notices. The Nagarparishad City Engineer has appeared and filed application and affidavit vide Exh.74 and 75 and thereby submitted that notices sought by the plaintiff in this case are very old and cannot be found even after searching for them. Therefore, it shows that the Nagarparishad failed to produce notices alleged by the plaintiff. However, in order to prove the contents of the document, primary evidence has to be laid. Yet, the plaintiff is seeking permission to lead secondary evidence in respect of these notices on the ground that it has not been filed by the witness.

5. In this aspect, I have gone through the authority laid down by Hon. Bombay High Court in **Karthick Gangadhar Bhat vs Smt. Nirmala Namdeo Wagh And Anr. 2017(6) ALL MR 769**, wherein, it has been observed that,

“Under Section 65(c), where the original is lost, the party seeking to adduce secondary evidence must depose that the original is lost and must also depose to the other conditions set out in that sub-clause, viz., that he is not guilty of default or neglect. The section itself says that in a case under 65(c), any evidence of the contents is admissible. Again, there is simply no question of 'leave' being required.”

6. Hence, taking into consideration the above aspect, it is clear that, the party has to establish the foundational facts before the court and the Court should record a satisfaction on the basis of such evidence that the concern City Engineer of Nagapariashad did

not file the notices before admitting the secondary evidence. If these conditions are not proved, the secondary evidence cannot be admitted in the evidence. However, in the instant suit, this application seeking permission to lead secondary evidence which is different from the aspect of admitting the document as a secondary evidence.

7. Hence, at the time of admitting the alleged document, the plaintiffs have to prove those foundational facts. Accordingly, he issued notice dated 11.06.202, 25.09.2025 & 01.12.2025 to the concerned chief officer of Pandharpur Nagarparishad through Court. The concerned officer of Pandharpur Nagarparishad filed application and affidavit that, notices sought by the plaintiff in this case are very old and cannot be found even after searching for them. The advocate of defendant submitted that, after due verification of register said notices required to be filed on record. But, the concern officer of Nagarparishad himself submitted that, he searched the record and failed to file sought record as it is older one. In view of the above authority, there is no such specific need to seek permission of the court. Accordingly, as such, there would be no bar to allow this application and to grant the liberty to the plaintiff to lead secondary evidence. Besides this, he has to establish the foundational facts in order to admit the alleged documents. Accordingly, question as to admissibility of the document in order to prove the contents sufficiently remains open. Resultantly, following is the order –

ORDER

1. The application at Exh. 79 is allowed
2. The plaintiff is at liberty to lead secondary evidence as his desires.
3. The question as to admissibility, contents, truthfulness, genuineness and relevancy of the documents is open.
4. Parties to bear their own costs.

Place – Pandharpur.
Date – 18/04/2026

(Priyanka S. Dhumal)
6th Civil Judge, J. D., Pandharpur.

Certificate

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

Name of Stenographer :- V. S.Chintanpalli (L. G.)

Court :- 6th Jt.C.J.J.D. Pandharpur

Date :- 18.04.2026

Judgment/Order signed by
the Presiding Officer :- 18.04.2026

Judgment/Order uploaded on :- 18.04.2026