

Order Below Exh. 45

This is an application for directing the plaintiff to produce the document.

02. It is contended that, the plaintiff has filed present suit as Director and registered power of attorney holder of Mukund Namdev Kadam who is Director of company. However, the defendants are sure that, he is not the Director or registered power of attorney holder of company. Learned advocate for the defendants inquired with company Registrar, and he came to know that, there is no entry showing that the plaintiff is Director of the plaintiff company. So he do not have right to file such suit. He has mislead the Court and has fraudulently filed this case. Therefore, it is contended that document mentioned in application are necessary to be brought before the Court. Hence, he prayed for issuing direction to the plaintiff to produce document.

03. The plaintiff resisted application under consideration by filing say below Exh. 57. In which they have denied all the contention of the application under consideration. It is contended that, the application is devoid of merit and outside the scope and purview of Code of Civil Procedure. The defendant cannot demand or pray in such a way. The plaintiff is authorized person, authorized by resolution, which is already produced in the Court. The document sought for are not at all relevant to this matter. The defendants are misunderstanding the provisions of law. On all these and other grounds plaintiff prayed for rejection of application.

04. Heard learned advocate for the defendants. While learned advocate for the plaintiff remained absent though called repeatedly. Hence, matter proceeded without his argument. Perusal of record shows that, defendants have challenged locus standi of the plaintiff to file present suit. The plaintiff has produced on record resolution passed in his favour to represent the plaintiff company. However, it is contention

of defendants that, the plaintiff is not at all duly authorized to represent the plaintiff company and document in question will reveal this fact. However, documents are in possession of the plaintiff. So, it is necessary to be brought on record.

05. As per learned advocate for defendants he has moved application under consideration vide Order 12 Rule 8 of Code of Civil Procedure. However, it is pertinent to note that, still matter is for argument on different application and no effective hearing has started nor issues have been framed. Therefore, at this stage no notice to produce document or application to lead secondary evidence in respect of documentary evidence required to be give. However, only because wrong section or provision is quoted application cannot be rejected and as per Order 11 Rule 14 the party to the proceeding can call for the documents in possession of adversary at any time during pendency of the suit. The power to order production of document is coupled with the question to examine the expediency, justness and the relevancy of the documents to the matter in question. These are all the relevant considerations, which the Court shall have to advert to, way before deciding to summon the document in possession of the party. The Court has no discretion under this rule to refuse an order for production unless the documents are privileged. In the light of this provision we have to see the facts of case in hand.

06. In case in hand it is contention of defendant that, plaintiff company is already dissolved. There is no Board of Directors and it's entry is not with the Registrar of company. The plaintiff who have filed this suit is not at all duly authorized by law to file such suit and he has misled the Court by producing false and fabricated documents. He himself is responsible for misrepresentation, cheating etc. and the criminal action is required to be taken against him. So also, the defendants have moved application under Order 7 Rule 11 of Code of Civil Procedure for rejection of plaint. So considering this factual aspects

it will be proper to direct the plaintiff to produce documents mentioned in application under consideration. Hence, issue summons to the plaintiff for production of document on P.F.

[Sou. V. P. Gaikwad]

Date:- 15/11/2017

Jt. Civil Judge, Sr.Division, Karad.