

ORDER BELOW EXH. 72 IN S.C.C. NO. 73/2019.

The complainant has filed this application for permission to adduce documentary evidence with regard to Resolution of the complainant society which is filed below Exh.3 and its original is also filed on record. Say of otherside is called thereon.

2. Ld. Adv. Shri. A. D. Ghadage for the complainant has submitted in accordance with contentions of the application. He has further submitted that, during examination-in-chief (Exh.11) Dt. 26/08/2022 of an authorized person (CW-1) of the complainant society, CW-1 was referred True Copy of the Resolution. At that time, the accused has objected the same on the ground that, as the resolution is not original one and it is a True Copy, therefore, being secondary evidence subject to his objection, True Copy of the Resolution may be marked as exhibit number. After hearing both parties, this Court has passed order to decide said objection at the time of final argument.

3. Ld. Adv. Shri. A. D. Ghadage for the complainant has further submitted that, lateron, after cross-examination of CW-1, the complainant examined another witness. Thereafter, as per order passed below Exh.63, this Court has permitted the complainant to re-examine CW-1 with regard to documents mentioned in application (Exh.63) as per rules. Soon thereafter, the complainant moved present application. The complainant needs to be given permission to bring on record original Resolution authorizing him to file the complaint. If the objection is decided at the time of final arguments, then, the complainant would be prevented from adducing the documentary evidence. Therefore, it is necessary to bring on record said document and said objection needs to be decided at this stage. The complainant has not closed its evidence. If the permission is granted, no prejudice would be caused to the accused. Whereas, if

the permission is not granted, then, the complainant would be prevented from adducing material evidence and prejudice would be caused to the complainant. The complainant is not trying to fill up lacunae as contended by the accused. Hence, he prayed to allow the application.

4. Ld. Advocate Shri. P. K. Ghadage for the accused has submitted in accordance with contentions in the say. He has further submitted that, the complainant has not mentioned said document in his further affidavit in-lieu-of examination-in-chief (Exh.66). The complainant is trying fill up the lacunae. The application, if allowed, would caused great prejudice to the accused. The complainant is given ample opportunity from time-to-time. The application is not tenable. Hence, he prayed to reject the application.

5. Perused the application, say (Exh.73) and record. Heard both sides. The complaint is filed under Section 138 of the Negotiable Instruments Act. Undisputedly, evidence of the complainant is not concluded yet. As per Order passed below Exh. 63, this Court has permitted the complainant to re-examine CW-1 to the extent of documents mentioned in that application and as per law of evidence. Soon thereafter, the complainant moved present application in order to bring on record the Resolution authorizing CW-1 to file the complaint and proceeding with matter. Undisputedly, the complainant has filed on record True Copy of the Resolution at the time of filing complaint vide Exh.3. Undisputedly, True Copy of the Resolution was referred to the CW-1 during further examination-in-chief (Exh.11). After considering objection of the accused for proving said document and hearing both parties, this Court has passed order to decide said objection at the time of final arguments.

The objection of the accused dt. 26/08/2022 below Exh.11 shows that, it was taken on the ground that, said document is a secondary evidence.

6. Through this application, the complainant is seeking permission to prove original Resolution which is filed on record on 03/01/2025 vide Exh.71. It is settled law that, in so far as objection regarding proof of document is concerned, the same has to be decided then and there. Therefore, if the objection is decided at the time of final argument, then, the complainant would be prevented from adducing its evidence on record. Whereas, if the permission as sought is for granted then, no prejudice would be caused to the accused.

7. This being a Trial Court, opportunity needs to be given to the complainant to bring on record said original Resolution. As far as submission that, said document is not mentioned in further affidavit (Exh.66), to that effect, as stated above, the complainant has already filed on record True Copy of said resolution in earlier examination-in-chief. Therefore, even if, the document does not bear reference in further affidavit Exh.66, same can be brought on record as per law and while deciding said objection which is kept in abeyance till final arguments. The document appears to be necessary for deciding the case on its merits. Needless, to state that, the accused would get necessary opportunity as per law for cross-examination. Thus, the application deserves to be allowed. Hence, following order.

:- ORDER :-

- i. The application (Exh.72) is allowed as per follows.

- ii. The complainant is permitted to adduce documentary evidence with regard to the original Resolution at the time of re-examination of CW-1 as per law of evidence.
- iii. Thereafter, the accused is at liberty to cross-examine CW-1 as per law.

Place : Patan.
Date :- 24/01/2025.

(P.S. Girgaonkar)
Civil Judge (Jr. Div.), Patan