

ORDER BELOW EXH. 52 IN CRI. S. C. C. 976/2018.

**(Rudreshwar Gramin Bigar Sheti Sahakari Patsanstha Vrs. Bhrat
Lahu Desai)**

The learned advocate Shri. A. D. Ghadage for the complainant filed the application for exhibiting the documents alongwith the affidavit of complainant. The learned Advocate Shri. P. K. Ghadage for the accused filed the say and strongly opposed the application.

02. The learned Advocate Shri. A. D. Ghadage for the complainant submitted that, the complainant produced the documents of office copy of notice which is sent to the accused at Sr. No. 3 and postal acknowledgment receipt Sr. No. 4 with list of documents Exh. 3. The complainant has mentioned regarding the notice and postal acknowledgment receipt at his chief-examination at Exh. 16. Due to inadvertence the notice and postal acknowledgment receipt could not be exhibited. The accused also send reply notice which is also produced on record. Hence, prayed to allow the application and to give exhibit numbers to those documents.

03. The learned Advocate Shri. P. K. Ghadage for the accused strongly opposed the application on the grounds that, the said document are not proved as per the Evidence Act. Only the reference of notice in the chief-examination can not be said that document is proved. Its contents and signature must be proved. The mode of proving the document is absent. If the documents are exhibited at this stage, it will prejudice the accused. In view of the

Section 27 of General Clauses Act, the documents acknowledgment receipt to be proved. The application is placed after concluding the final arguments of the case. Ignorance of the complainant can not be suffered by the accused. If the application is allowed it will cause prejudice to the accused. Hence, prayed to reject the application.

04. Heard the learned Advocate Shri. A. D. Ghadage for the complainant and Shri. P. K. Ghadage for the accused.

05. In view of Section 27 of the General Clauses Act, 1897 reads as under -

Section 27. Meaning of service by post

Where any [Central Act] or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression "serve" or either of the expressions "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

06. Perused the record. It appears that, the affidavit of chief-examination of the complainant is filed at Exh.16 and in it the reference of notice and the acknowledgment receipt is mentioned. In the present case, both sides have concluded their final arguments and at this stage the application is placed by the complainant.

07. It appears that, with list of documents Exh.3 the office copy of notice at Sr. No. 3 and postal acknowledgment receipt at Sr. No. 4 are produced on the record on 13.12.2018.

08. At this stage, only exhibiting the documents on the basis of application will not serve the purpose. For fair trial, it appears proper to examine the complainant for the said documents, by giving opportunity of taking chief-examination of the complainant again for proving and exhibiting the notice and postal acknowledgment receipt. It also appears proper to give opportunity to the accused for taking cross-examination of the complainant for that point. Hence, the order.

ORDER

1. The application is partly allowed.
2. It is directed to the complainant to take chief-examination of the complainant for proving and exhibiting the office copy of notice and postal acknowledgment receipt produced with list of documents Exh.3, as per the provisions of the Indian Evidence Act, 1872.
3. The accused is at liberty to take the cross-examination of the complainant on that point.
4. Both the parties shall take note of this order.

Place: Patan, District - Satara

(C.Y. Neware)

Date: 06.12.2024

Judicial Magistrate First Class, Patan.