

ORDER BELOW EXH. 153 IN R.C.S. 171/2015
(Chandrakant Patil Vs. Aasif Dhanani and others)

- 1] Plaintiffs filed this application for permission to lead secondary evidence.
- 2] Defendant objected the application by filing say thereon.
- 3] Learned advocate Shri. A. P. Adhikari for defendant submitted that the plaintiff did not issue the notice to party and therefore, provision of Order XI Rule 16 is not complied and therefore, he submitted that application shall be rejected.
- 4] Learned advocate Shri. Pal for plaintiff submitted that the notice issued to the advocate is a sufficient compliance. He further submitted that defendants' advocate replied to his notice. The both the notices are on record. He further submitted that if application is rejected, great prejudice will cause to plaintiff.
- 5] Section 65 of Indian Evidence Act provides the circumstances in which secondary evidence may be given and it is one of the circumstances that document is in possession of the person against whom it is sought to be proved and in such case the notice under Section 66 is required. The secondary evidence may be given if the said person did not produce it after receipt of the notice. According to Section 66, the said notice may be given to the party or his pleader or his attorney. In present facts, plaintiff issued the notice to advocate of the party and therefore, it is sufficient compliance of Section 66 of the Indian Evidence Act. Hence, I am disagreed with the submission of learned advocate Shri. A. P. Adhikari. Accordingly, I pass the following order.

ORDER

Defendants are directed to produce the documents as described in the notice dated 16.08.2016 issued by learned advocate Shri. Pal. If, defendants do not follow said order till next date, plaintiff is permitted to lead secondary evidence of said documents through certified copies.

Palghar
Date : 27.08.2018

Sd/-
(D. U. Dongare)
Jt. Civil Judge, S.D.
Palghar.