

R.C.S. No. 10/2014**Sandip Waskar Vs. State and ors.****ORDER BELOW EXH.123.**

This is an application to recall the witness as per Order XVIII Rule 17 of the Code of Civil Procedure (for short C.P.C.).

2. The application is filed by the plaintiff to recall himself for exhibition of certain documents which are filed during evidence.

3. Read the application and say. Heard both the sides.

4. It is submitted by learned Advocate for plaintiff that the plaintiff has examined himself by way of affidavit at Exh.63 and during his further examination certain documents are not exhibited. Ld. Advocate drawn my attention to the examination of plaintiff below Exh.63, wherein the note is made by the Court about exhibition of all the documents filed by the plaintiff. Thus, according to Ld. Advocate for plaintiff, all the documents which are filed during evidence and which are referred in the affidavit at Exh.63 are not exhibited and therefore, the plaintiff is liable to be recalled for exhibition of those documents. Learned Advocate drawn my attention to the list of documents filed by plaintiff vide Exh.62. Thus, Ld. Advocate prayed for allowing the application.

5. On the contrary, Ld. Advocate for defendant No.18 to 20 and 23 submitted that the plaintiff cannot examine himself as a witness

for exhibition of documents mainly for two reasons one is that, the provision relating to better particulars are omitted and further all the relevant documents which are filed by the plaintiff are exhibited during his examination below Exh.63. Ld. Advocate also submitted that plaintiff has further taken steps to exhibit the documents which are remained to be exhibited and therefore, present application is liable to be rejected.

6. None present for other defendants to argue the matter.

7. I have considered the submissions on record. It is matter of record that, suit is filed in the year 2014. The issues are settled on 12/12/2014. The plaintiff has examined himself by way of affidavit at Exh.63. My Ld. Predecessor further examined the plaintiff below Exh.63 on 04/03/2015 with endorsement that the documents filed by the plaintiff be exhibited. Then the matter was adjourned for cross-examination. The learned Advocates for respective defendants thereafter completed the cross-examination of the plaintiff from 06/01/2016 to 11/02/2016. The plaintiff has examined one more witness and now matter is pending for further evidence of the plaintiff.

8. What can be gathered from the application and submissions on record that certain documents, which are filed by the plaintiff, during the course of hearing, are not exhibited. The plaintiff has made earlier two attempts for filing of additional evidence, which are turned down by my Ld. Predecessor. Though the plaintiff has failed to specifically narrate or refer the documents, which are sought to be exhibited, in his application but it is evident from record and particularly from the list at

Exh.62. Thus, for just decision of the case, the plaintiff can be given an opportunity to exhibit the documents which are filed on record and referred in the affidavit at Exh.63. The recalling of plaintiff can be limited to the extent of exhibition of documents and the defendants will have an opportunity to object the said exhibition and further cross-examine the plaintiff on the facts sought to be proved by way of said documents. Hence by imposing appropriate amount of costs, if application is allowed, no prejudice would be caused to the defendants.

9. So far as the question of better particulars as submitted by the Ld. Advocate for defendant Nos.18 to 20 is concerned, the application is not strictly covered by Order VI Rule 5 of C.P.C. Hence, for the fair trial and just decision of the case, the plaintiff cannot be denied an early opportunity of adducing his material evidence. Hence, I proceed to pass following order.

ORDER

- a) The application at Exh.123 is hereby allowed and plaintiff is permitted to recall himself as a witness for exhibition of those documents which are not exhibited earlier in view of contents of his affidavit at Exh.63.
- b) It is made clear that the examination of plaintiff after recall will be limited to the extent of above point of exhibition of documents and no new material will be permitted to be added by way of his further examination.
- c) The plaintiff shall pay the costs of Rs.1,000/- to the defendants who have contested this

application i.e. defendant Nos.18 to 20 and 23.

- d) Payment of costs is condition precedent for recalling of witness as sought.

Pronounced in open Court.

Date : 22/06/2023
Darwha, Dist. Yavatmal.

(Devendra B. Patange)
2nd Jt. Civil Judge (Sr. Div.) Darwha.