

IN THE COURT OF SMALL CAUSES AT MUMBAI

ORDER BELOW EXHIBIT –37

IN

R.A.D. SUIT NO. 1476 OF 2019

Vijaya Dattatraya Bhojane ... Plaintiff

V/s

1. Mr. Rajan Thomas & Ors. ... Defendants

Coram : R. U. Shaikh, Judge

C. R. No.16

Date : 09/11/2023

ORDER :

1. This application is taken out by the plaintiff for seeking permission to file additional affidavit in lieu of examination in chief.
2. As per Exh. 38 and Exh. 39, defendants opposed the application.
3. Heard all the parties.
4. As per record, plaintiff filed affidavit in lieu of examination in chief as per Exh.16. After deciding admissibility of the documents, matter was kept for the cross-examination. Before defendants commenced their cross-examination, plaintiff filed this application. In that case from the prospective of filing affidavit and non commencement of cross-examination shows no prejudice

would be caused to the defendants, if plaintiff is permitted to file additional affidavit of evidence.

5. As per defendants, plaintiff wish to lead evidence which is not in the plaint. If this affidavit is introduced at such stage, then defendant would have no opportunity to putforth their side. In that case, it will cause prejudice to them. Even from said angle, if the proposed affidavit of examination in chief is considered, then plaintiff wish to file said affidavit for stating facts as to certain electricity bills. The whisper of electricity charges is already made in the plaint and earlier affidavit of evidence Exh. 16. So plaintiff is not introducing any new case. Defendants, after all, will have opportunity to cross-examine the plaintiff. So, the stand of the defendants that introduction of this affidavit of evidence will cause prejudice to them is without substance.

6. In this regard, the reasons cited for filing this application is also required consideration. It is claimed that earlier the electricity bills were misplaced. Plaintiff found those electricity bills. Therefore, she wish to file affidavit of evidence. If this reason with above discussion is considered, then plaintiff must have opportunity to putforth her case at fullest extent. It is not the case that plaintiff is allowed to lead additional evidence, it will cause prejudice to the other side. Looking to the pleadings, earlier evidence and the purpose of filing this additional affidavit, in my view

plaintiff can be permitted to file additional affidavit of evidence. In the result, I pass the following order.

ORDER

1. Application [Exh. 37] is allowed.
2. Plaintiff is permitted to file additional affidavit in lieu of examination-in-chief.
3. Plaintiff is directed to restrict her additional affidavit in lieu of examination-in-chief for the reasons provided in the application.
4. Defendants are at liberty to conduct cross-examination on both the affidavits of evidence of plaintiff.

sd/-

[R. U. Shaikh]
Judge, C. R. No.16

Date : 09/11/2023