IN THE BOMBAY CITY CIVIL COURT AT BOMBAY.

APPLICATION (EXHIBIT 103)
IN
S. C. SUIT NO. 450 OF 2009

Industrial Bhavan (Worli) Ltd.)...Plaintiff

Versus

Sushil Kanubhai Shah & Others)...Defendants

CORAM : HIS HONOUR JUDGE SHRI R.R.BHAGWAT.
(COURT ROOM NO.66).
DATE : 6th DECEMBER, 2022.

Shri Abhishek Mishra, Advocate for the plaintiff.

Shri Ketan Yadav, Advocate for defendants no.1 to 4.

ORDER BELOW EXHIBIT 103.

1. This is an application to issue summons for production of documents under Section 139 of the Evidence Act. Perused application and record of the case. Heard learned counsel Shri Abhishek Mishra for the plaintiff and learned counsel Shri Ketan Yadav for defendants no.1 to 4.

2. On perusal of the record, it appears that issues are framed at Exh.12 on 11/02/2011 and matter was for cross-examination of PW 1 Dileep (Exh.29). No cross-examination order is passed as per order in roznama dated 30/03/2022. Then, the matter is fixed for further evidence of the plaintiff. Now, the plaintiff intends to issue witness summons to Deputy Registrar, Registrar of Companies, Mumbai for proving documents at sr.no.2 and AXIS Bank Limited for proving documents at sr.no.8 in list of documents.

3. It is contention of the plaintiff that original certified copies were filed by Registrar of Companies in Suit No. 2125/2005 and the

plaintiff had filed certified copies of those documents in the present matter. He has also contended that documents at sr.no.8 are certified copies of documents in Suit No. 2125/2005 produced by PW 6 of UTI Bank in that suit.

4. Though the defendants have not filed reply to the application, learned counsel Shri Ketan Yadav submitted that list of witness and summons to witness can be issued as per Order XVI Rule 1 of the CPC. The plaintiff should have filed chamber summons as per Rule 43 and 44 of the Bombay City Civil and Sessions Court Rules, 1948. He also relied upon paras no.5, 6, 7 and 17 in citation of **D. Rammohan Rao V/s. M/s. Shridevi Hotels Pvt. Ltd. And Others 2005 SCC OnLine AP 760** and submitted that relevancy of documents is not explained by the plaintiff. He submitted that the relevancy of such documents is required to be explained. When production of a certified copy would answer the purpose, witness summons is not required to be issued to the Registrar of Companies and the bank officials. He also relied upon para 7 in citation of **Basnagauda V/s. Dr. S.B.Amarkhed and others (1992) 2 SCC 612** to give stress upon the aspect of relevancy.

5. Learned counsel Shri Abhishek Mishra for the plaintiff submitted that the documents are called in another suit and certified copies are filed. According to him, no prejudice would be caused to the defendants if this application is allowed.

6. The plaintiff has filed certified copes of these documents at sr.no.2 and 8 with list of documents (Exh.11). The plaintiff has made endeavour to bring on record relevant evidence by obtaining certified copies in other suit proceeding i.e. S.C.Suit No. 2125/2005. Even then,

these documents are not exhibited. Therefore, the plaintiff is justified in seeking the relief of issuance of witness summons to the concerned department or authority for producing original documents with certified or true copies thereof and for placing the same on record. So far as aspect of relevancy is concerned, it is matter of appreciation of evidence. The plaintiff had placed these copies on record long ago in the year 2010. Therefore, it would not be appropriate to restrain him from proving these documents. Furthermore, the plaintiff has filed evidence affidavit of PW 1 Dileep (Exh.29) in the year 2012 and tried to explain documents relied by him at length. Furthermore, PW 1 Dileep is cross-examined at length, but no cross order came to be passed on 30/03/2022. Considering facts and circumstances of the present case, there is less scope to apply ratio in above referred citations. At this stage, conclusion cannot be drawn that the documents are irrelevant. Hence, I pass the following order :

- ORDER -

1. Application (Exh.103) is allowed.

2. Issue Witness Summons to Deputy Registrar, Registrar of Companies, Mumbai and AXIS Bank Limited, Prabhadevi, Mumbai for production of original documents and certified true copies thereof as mentioned in pages no. 4, 5 and 6 of application (Exh.103).

3. Copies of pages no. 4, 5 and 6 of application (Exh.103) shall be annexed with witness summons accordingly.

(R.R.BHAGWAT)
Judge, City Civil Court,
(Court Room No.66)
Mumbai.

Date : 06/12/2022.

1. Dictated on : 06/12/2022.

2. Transcribed on : 07/12/2022.
3. Signed on : 08/12/2022.
4. Delivered to Certified Copy Section on :

"CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER"	
UPLOAD DATE AND TIME 08/12/2022. 12.52 p.m.	NAME OF STENOGRAPHER Miss M.A.Kulkarni.

Name of the Judge (with Court Room no.)	HHJ Shri R.R.Bhagwat. (Court Room No.66).
Date of Pronouncement of Judgment/Order	06/12/2022.
Judgment/Order signed by P.O. on	08/12/2022.
Judgment/Order uploaded on	08/12/2022.