

: MHSCA2-003272-2013

IN THE COURT OF SMALL CAUSES, MUMBAI

ORDER BELOW EXHIBIT NO.65

IN

L.C. SUIT NO. 210/249 OF 2013

New India Assurance Company Limited]...Plaintiff.

V/s.

Edelweiss Financial Services Limited]
(Formerly known as Edelweiss Capital Limited)]... Defendant.

Navdeep Vora & Associates, Ld. Advocate for the Plaintiff.
M/s. Thakore Jariwala & Associates, Ld. Advocate for Defendant.

Coram :- Shri S. A. Gawai, Judge

C. R. No.20

Date : 04/01/2022

ORAL ORDER

This is an application for discarding the affidavit (Ex.57) of the plaintiffs witness filed in lieu of examination in chief and power of attorney filed below (Ex.58) and directions to the plaintiff for producing the original power of attorney and impounding the same. The application was strongly opposed by the plaintiff. Read the application and the say. Went through record of the case. Heard the learned advocates for the respective parties at sufficient length.

2. The defendant contended that, the power of attorney does not give any power to the witness to depose on behalf of the plaintiff. Therefore it is not admissible in evidence. Moreover, the said power of

attorney was not framed as per per the rules of the Notaries Act, 1952. Therefore, the defendant prayed to discard the evidence of the plaintiff's witness and also the power of attorney and impound the same.

3. In support of his contentions the Ld Advocate for the defendant relied on the following reported judgments;

- 1 J. G. Hegde Vs. R. D. Shukla, 2004(1) Mh.L.J. 973.
- 2 H. K. Taneja & Ors., Vs. Bipin Ganatra and Keshavrao J. Bhosale, 2009(2) Mh.L.J. 855.
- 3 R. K. Roja Vs. U. S. Rayudu & Anr., (2016)14 SCC 275.

4. In the matter of **J. G. Hegde (supra)** relied by the defendant, directions for carrying out inspection of notarial register were issued. Whereas, in the matter of **H. K. Taneja (supra)** the Hon'ble High Court dealt with the presumption of execution of notarised document and held that, serial number of the entry must be put on the document to collate the entry with it. It was further held that, in case of dispute the factum of notarization would have to be separately proved by the applicant. There is no presumption of the notarized document.

5. In the matter of **R. K. Roja (supra)** relied by the defendant, the Hon'ble Apex Court dealt with the provisions of Order VII, Rule 11 of the CPC and right to file written statement. There cannot be a quarrel as regards to the propositions of law laid down by the Hon'ble Apex Court and Hon'ble High Court, in the above referred cases. However, the facts of the present case and the above cases are different. Therefore, they are not helpful to the defendant.

6. In the present case, the plaintiff filed affidavit (Ex.57) of its witness with the copy of power of attorney (Ex.58). The defendant has filed its say on the said document vide (Ex.61). The case is now for hearing of the parties on the admissibility of the documents. Whether the witness of the plaintiff is duly authorised or not and whether the document is admissible or not can be decided after hearing both the parties on the admissibility of the documents and evidence. In view of the circumstances, I find no substance in the present application and is liable to be rejected. In result, I pass the following order;

ORDER

1. The application is rejected.
2. Costs in cause.

Mumbai
Date : 04/01/2022

Sd/-
(S. A. Gawai)
Judge, C. R. No.20