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: MHSCA2-003272-2013

**IN THE COURT OF SMALL CAUSES, MUMBAI**

**ORDER BELOW EXHIBIT NO.30  
IN  
L.C. SUIT NO. 210/249 OF 2013**

New India Assurance Company Limited ...Plaintiff.

V/s.

Edelweiss Financial Services Limited ... Defendant.

Navdeep Vora & Associates, Ld. Advocate for the Plaintiff.

M/s Thakore Jariwala & Associates, Ld. Advocate for Defendant.

Coram : Smt.J. S. Jagdale, Judge  
Court Room No.20  
Date: 09/10/2019

**ORAL ORDER**

Read application (Ex.30) filed by the defendant and say overleaf filed by the plaintiff. Perused record and roznama. Heard arguments of both ld advocates.

2. The defendant has filed present application for recalling order passed below applications (Ex.28 and 29). It is contended that, on 01/02/2019, the plaintiff has filed handwritten applications (Ex.28 and 29) were filed and on 11/02/2019, the defendant's advocate sent letter to the plaintiff advocate and called upon to furnish application and documents filed in the court on 01/02/2019. The plaintiff advocate

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provided copy of application (Ex.28) only but without furnishing copy of affidavit of POA and application (Ex.29). Therefore, the defendant could not file their say and suit was adjourned on 05/02/2019 and 11/03/2019. Thereafter, on 19/03/2019, order was passed on application (Ex 28 and 29) without giving opportunity of being heard to the defendant and allowed both the applications. Record shows that, said POA holder has no authority to file evidence on behalf of the plaintiff and therefore his evidence affidavit cannot be permitted to be part of record. The defendant is prayed to allow present application, to recall orders passed on application (Ex.28 and 29) and to strike of evidence affidavit of said POA.

3. The plaintiff has raised objection by filing say overleaf of the application. It is contended that, the defendant has supplied unaffirmed copy and therefore the plaintiff reserved their say. The plaintiff has prayed to reject the application.

4. On perusal of record, it shows that the defendant has given say on 01/02/2019 through their advocate on application (Ex.28) and thereby given no objection for change of witness, under which the plaintiff sought return of original document filed in evidence of their witness. On perusal of application (Ex.29), the defendant has filed say on the same day i.e. on 01/02/2019 and raised objection with endorsement that 'leave it to the court for orders'. Orders dated 29/03/2019 passed on application (Ex.28 and 29) shows that the defendant gave their say/reply and after hearing both the parties, orders were passed. Therefore, it is clear that, the defendant received opportunity to contest both the applications. Therefore, present application holds no merits and therefore liable to be

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rejected. Considering all these aspects, I pass following order;

**ORDER**

1. Application (Ex.30) is rejected.
2. Costs in cause.

Date :09/10/2019

(J. S. Jagdale)  
Judge, C R No.20