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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.8319 OF 2014

Ashok Gangaram Ranglani,
Age – 61 years, Occu.Agri./Business,
R/o 6, Shivram Nagar,
In front of Collector Bungalow,
Jalgaon, Tq. & Dist. Jalgaon ..PETITIONER

VERSUS

Amrish Ishwarlal Jain,
Age – 43 years, Occu. Business,
R/o 169, Balaji Peth, Jalgaon,
Tq. & Dist. Jalgaon ..RESPONDENT

Mr Vijay B. Patil, Advocate for petitioner;
Mr S.P. Shah, Advocate for respondent

CORAM : N.W. SAMBRE, J.
DATE : 9th December, 2015

ORAL ORDER :

The petitioner-plaintiff, in Special Civil Suit No.218 of 2014, after grant of permission to lead secondary evidence, vide order dated 5th April, 2014, passed below Exh.96, has sought to establish a chit written in the handwriting of one Satyanarayan Khatod and urged the Trial Court to mark exhibit to the same, as contents thereof were claimed to have been proved. The said request is rejected by the Trial Court by marking the said contents as Article "A". Thus, the present petition.

2. While taking shelter of section 67 of the Evidence Act, learned Counsel appearing on behalf of the petitioner, would urge that in view of

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the fact that the witness was knowing about the handwriting and signature of Satyanarayan Khatod and having identified the same, the Trial Court ought to have pronounced that the document was proved and should have given exhibit thereto. According to the learned Counsel, the impugned order is not sustainable and directions need to be issued to exhibit Article "A".

3. The prayer is opposed by Mr Shah, learned Counsel appearing on behalf of the respondent-defendant, by relying upon the judgment of this Court in the matter of **Prakash Cotton Mills Pvt. Ltd. vs. Municipal Commissioner for Greater Bombay & anr.**, reported in **AIR 1982 BOMBAY 387**. According to him, even if the provisions of section 67 of the Evidence Act are read in the present matter, the inference drawn by the Trial Court is in accordance with the said provision as the Trial Court was alive of the fact that petitioner is neither author, direct witness to the document. He prayed that and the petition is liable to be rejected.

4. Having bestowed my thoughts to the submissions made, in my opinion, the shelter of section 67 taken by the learned Counsel for the petitioner-plaintiff, is wholly misplaced. The author of the said document is one Ghanshyam, who is not examined and the document is sought to be proved by the petitioner, by identifying his signature thereon. He is neither witness when the document was authored nor formed basis for leading secondary evidence, so as to prove the said document. The mode, as is adopted by the petitioner to prove the Article "A", in my opinion, is not known to law.

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5. In my opinion, appropriate reliance can be placed on observations made by this Court in paragraph 2 of the judgment in the matter of Prakash Cotton Mills Pvt. Ltd. (supra), which read thus :-

"2. Before the learned Additional Chief Judge of the Small Cause Court reliance had been placed by the petitioner on a sale-deed but the executant of the sale-deed was not examined. The proof of the signature of the executant, however, was offered but that itself could not prove the contents of the sale-deed or the truth of the contents of the sale-deed. On this ground the learned Judge refused to exhibit the sale-deed. While so doing he relied upon a judgment of Division Bench of this Court "In the matter of Mr. D, and Mr. S " 1 (1966) 68 Bom LR 226) in which it was held :

"To conclude this part of the discussion, we hold, in the first place that what has been formally proved is the signature of Abreo and not the writing of the body of the document at Exh. 28 and secondly, that even if the entire document is held formally proved, that does not amount to a proof of the truth of the contents of the document. The only person competent to give evidence on the truthfulness of the contents of the document was Abreo."

This view in fact confirms the view taken by Bhagawati J., as he then was , in [Madholal Sindhu v. Asian Assurance Co. Ltd](#) (1954) 56 Bom LR 147 : (AIR 1954 Bom 305). Both the judgments were noticed by Vimadalal J. In Bhima Thima Dhotre v, Pioneer Chemical Co., (1968) 70 Bom LR 683 . In this latter judgment Vimadalal J. has made himself bold to say that he sitting as a single Judge, did not agree with the view which the Division Bench has taken and thereafter proceeded to express his own views on the question of the proof of the content of a

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document . Obviously the views expressed by Vimadalal J. cannot be binding upon a judge of this court or any Judge of the subordinate Court because they are only his personal views and they are contrary to the binding decision given by the Division Bench, as Vimadlal J. himself has mentioned.”

6. In the above background, no case for interference is made out. Thus, the petition fails and stands dismissed with no order as to costs.

(N.W. SAMBRE, J.)

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