

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1514 OF 2015**

Alpa Hitendra Shah

Petitioner

Vs

Hitendra Vanvir Shah
and Ors

.. Respondents

Ms. Seema Sarnaik and Ms. Sangeeta Salvi, Advocate for
Petitioner.

Mr. Cyrus Bharucha a/w Ramchandra Yadav i/b Legal VIZZ,
Advocate for Respondent no.1

CORAM : R.G.KETKAR,J.
DATE : 18/02/2015

PC:

1. Heard Ms.Seema Sarnaik, learned counsel for the
petitioners and Mr. Cyrus Bharucha, learned counsel for
respondent no.1 at length.

2. By this Petition under Article 227 of the Constitution of
India, the petitioner-wife has challenged the order dated
20.1.2015 passed by the learned Judge, Family Court No.3,
Mumbai. In that order, the Family Court observed thus :

“1. The petitioner has filed his evidence affidavit.

2. He has referred documents in his examination
in chief.

3. All the documents are exhibited as per section
14 of Family Courts Act.

4. It is needless to say that exhibition of documents
is an administrative act of the Court and it does not
dispense with the proof of documents.”

3. In support of this Petition, Ms Sarnaik submitted that respondent no.1 filed list of documents in October, 2013. Respondent no.1 filed as many as 10 documents along with that list. The petitioner did not admit any of these documents. Respondent no.1 filed affidavit-in-lieu of examination-in-chief on 24.9.2014. He referred to all those documents in that affidavit. She submitted that though the petitioner raised objection as regards admissibility of these documents, the Family Court proceeded to mark those documents as exhibits. She relied upon the decision of the Full Bench of this Court in the case of Hemendra Rasiklal Ghia Vs Subodh Mody, 2008 (6) Mh.L.j. 886 and in particular paragraphs 71 to 77 thereof. She submitted that her right to cross examine the petitioner is seriously prejudiced. If documents are used in the cross examination, then documents get proved and can be read in evidence as held by the Apex Court in the case of Ram Janki Devi Vs. M/s Juggilal Kamlapat, 1971(1) SCC 477. She submitted that present case falls in category (ii) referred in paragraph 71 of the Full Bench decision. In paragraph 74, the Full Bench held that the objection has to be taken when the evidence is tendered. Once the document is admitted in evidence and marked as an exhibit, the objection that it should not be admitted in evidence or that the mode adopted for proving the document is irregular, cannot be allowed to be raised at any stage subsequent to the marking of

the document as an exhibit. She submitted that the petitioner has raised the objection at the threshold and despite that the Family Court admitted those documents in evidence and marked as exhibits.

4. On the other hand, Mr. Bharucha supported the impugned order. He submitted that under section 14 of the Family Court Act, 1984 (for short, "Act"), the Family Court is empowered to receive as evidence any documents, among others, that may in its opinion assists it to deal with effectively the dispute whether or not same are otherwise relevant or admissible under the Indian Evidence Act, 1872. He further submitted that apart from marking the documents as exhibits, the Family Court made it clear that it has not dispensed with proof of documents.

5. I have considered the rival submissions made by the learned counsel appearing for the parties. I have also perused the material on record. As noted earlier, the petitioner has filed list of documents in October, 2013. Along with list of documents, he has filed as many as 10 documents. These documents have been referred in the affidavit. The Family Court marked them as exhibits as per Section 14 of the Act. It was further observed that exhibition of documents is an administrative act of the Court and it does not dispense with the proof of documents. In other words, by marking the documents as exhibits, the Family Court has not dispensed with the proof of these documents and respondent

no.1 will have to prove contents of these documents. Mere marking of the documents as exhibits, does not mean that the contents of the documents are proved. In view thereof, I do not find that the Family Court has committed any mistake in passing the impugned order. The reliance placed by Ms Sarnaik on the decision of the Full Bench does not advance the case of the petitioner as objection in respect of category no.(ii) in paragraph 71 **where, the objection does not dispute admissibility of document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient.** The present case does not fall in category no.(ii) of paragraph 71 of Full Bench decision. (Emphasis supplied).

8. In the result, the Petition fails and the same is dismissed. At this stage, Ms. Sarnaik orally applies for stay of this Order for a period of four weeks from today. As the petitioner wants to challenge this order in higher Court, notwithstanding dismissal of the Writ Petition, this order is stayed for four weeks from today.

Issuance of authenticated copy of this order is expedited.

(R.G.KETKAR, J.)