

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.9699 OF 2015

Shailendra Jwalaprasad Shukla

.. Petitioner

Versus

Tarachand Champaklal Jain

.. Respondent

**Mr. Y. V. Divekar a/w Mr. U. M. Mahajan i/by Divekar & Co., for the
Petitioner.**

**Mr. S. N. Vaishnawa a/w Ms. Nupur J. Mukherjee i/by M/s. N. N.
Vaishnawa & Co., for the Respondent.**

CORAM : R.M. SAVANT, J.

DATE : 19th OCTOBER, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against the order dated 28.11.2014 as also the order dated 29.07.2015 passed by the Learned Judge of the City Civil Court, Greater Mumbai. By the said order dated 29.07.2015 the Trial Court has rejected the application Exh.7 filed by the Petitioner for review of the order dated 28.11.2014. In so far as the order dated 28.11.2014 is concerned, the Trial Court has recorded in the said order in the operative part as follow :-

“1. The original Power of Attorney tendered by the PW.
No.1 be read in evidence and exhibited as Exhibit 7.

2. The Promissory Notes are marked Exhibit 8, 9, 10 &

- 11 subject to proof of contents therein, respectively.
3. The statements of accounts are marked Exhibit 12 and 13 subject to proof of contents therein, respectively.”

The documents in question are Exh.8 to 11 and Exh.12 and 13 which as per the order dated 28.11.2014 are exhibited by the Trial Court subject to proof of contents therein.

2. In respect of the said order dated 28.11.2014 that the Defendant filed the application Exh.7 for review of the said order. The said application has been rejected on the ground that no case for review is made out and that Plaintiff is not absolved from the liability of proving the truth of the contents of the said documents. The Learned Counsel for the Petitioner whilst assailing the impugned order directing the documents to be exhibited subject to proof of contents therein sought to place reliance on the judgment of Full Bench of this Court reported in 2008(6) Mh.L.J. 886 in the matter of Hemendra Rasiklal Ghia Vs. Subodh Mody to contend that the aspect as to whether the documents are proved by the Plaintiffs was sought to be adjudicated by the Trial Court at the said stage itself. In my view, though the Full Bench judgment carves out 3 categories of documents in paragraph 71, the course of action adopted by the Trial Court in the instant case that the documents are exhibited subject to the proof of the contents cannot be faulted with. As ultimately unless the

contents are proved the said documents cannot be read in evidence. No case for interference in the Writ Jurisdiction of this Court is therefore made out. The Writ Petition is accordingly dismissed.

[R.M. SAVANT, J]