

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2767 OF 2016

Sachin Ramesh Mhatre	]
Aged 38 years, Occ: Business,	]
of Indian Inhabitant, residing at	]
B-701, Center Point, Opp. TMC	]
Building, Panchpakhadi,	]
Thane-400 602	].. Petitioner

Versus

Aditi Sachin Mhatre	]
Aged 33 years, Occ: Service,	]
of Mumbai Indian Inhabitant,	]
residing at 104, First Floor,	]
Avadhut Co-operative Housing	]
Society Ltd., Shiv Sena Bhavan,	]
Path, Dadar, Mumbai-400 028	].. Respondent

Mr. Mayur Khandeparkar i/by Mr. Mehul A. Shah, for the Petitioner.
Mr. R. T. Lalwani i/by Mr. Prakash Mahadik, for the Respondent.

CORAM : R.M. SAVANT, J.
DATE : 8th MARCH 2016

ORAL JUDGMENT

1. Rule. With the consent of the Learned Counsel for the parties

made returnable forthwith and heard.

2. The writ jurisdiction of this Court is invoked against the order dated 03.02.2016 passed by the Learned Principal Judge of the Family Court, Mumbai, by which order the Applications Exh.199 and Exh.221 filed by the Petitioner came to be partly allowed to the extent mentioned in the operative part of the impugned order. In the operative part of the impugned order, it is recorded to the effect that the documents which are admitted by the Respondent in the Marriage Petition and which find a place in paragraphs 6, 8, 10 and 11 of the impugned order shall be exhibited.

3. The challenge to the impugned order is on the ground that though the Petitioner has sought to produce a number of documents which have been listed in Exhs. 106, 18, 18A and 200, the Trial Court has not chosen to consider whether the said documents can be exhibited and save and except the documents which are mentioned in the operative part of the impugned order has rejected the exhibition of the documents which find a place in the said lists.

4. It is not necessary to burden this order with unnecessary details having regard to the controversy which lies in a narrow compass

and in essence is as to whether the documents produced by the Petitioner herein are required to be exhibited in view of the fact that they stand proved in accordance with law. The impugned order discloses that the Trial Court has rejected the said Applications Exh.199 and 221 which were styled as application for taking “the evidence on record and allowing the Petitioner to exhibit the evidence” meaning thereby that the Petitioner was seeking to produce the said documents as exhibits on the ground that it was the prime duty of the Petitioner to get the documents exhibited at the relevant time and in spite of the fact that he had the legal wherewithal to follow the procedure of production and exhibiting of the documents, the said procedure was not followed. The Trial Court has also refused to exhibit the documents on the ground that once the cross-examination of the other party starts then to prove the document by oral evidence automatically goes away. Prima-facie, from the record it does not appear that the exercise of marking of the documents produced by the parties or at least by the Petitioner was carried out before rejection of the Applications Exh.199 and 221.

5. During the course of hearing of the above Petition, the Learned Counsel for the Petitioner Mr. Mayur Khandeparkar made a statement that the Petitioner would rely upon the documents which are listed in Exh.106, 18, 18A and 200 and no other documents. This

statement was made in the context of the fact that it was the submission of the Learned Counsel appearing for the Respondent Mr. R. T. Lalwani that the Petitioner seeks to rely upon host of documents may be numbering more than 1500. It is required to be noted that the Petitioner has filed about five affidavits-in-lieu of examination in chief under Order XVIII of the CPC. The need for filing the said five affidavits need not be gone into in the present proceedings. In terms of the procedure that is applicable. It would have to be seen whether the documents which the Petitioner seeks to rely upon have been proved in accordance with law having regard to the averments made in the said affidavits of evidence. Since the Applications Exh.199 and 221 have been substantially rejected, on the grounds which have been adverted to hereinabove, in my view, the interest of justice would be served if the following directions are issued :-

I) The documents listed in Exh.106, 18, 18A and 200 (except Item No.4 in Exh.200 at page No.124) which the Learned Counsel for the Petitioner Mr. Khandeparkar on instructions of the Petitioner who is present in Court states the Petitioner would delete. The Learned Judge of the Family Court would consider whether the said documents can be exhibited on the touchstone of the affidavits of evidence filed by the Petitioner.

II) In view of the statement made by the Learned Counsel for the Petitioner Mr. Khandeparkar that Exh.106 is relateable to the affidavit of evidence dated 02.08.2013, Exh.18 is relateable to the affidavit of examination-in-chief dated 10.12.2013, Exh.18A and 19A are relateable to affidavits of examination-in-chief dated 06.09.2014, Exh.200 is relateable to the two affidavits of examination-in-chief dated 10.12.2015, Exh.107 and 19B. The Learned Principal Judge of the Family Court to consider the said documents as regards their exhibition on the touchstone of the said relevant affidavits and would mark the same as exhibits if the Court is satisfied that the same are proved in accordance with law.

III) It is clarified that Item No.4 at page No.124 of the list of Exh.200 stands deleted in terms of the statement made by Mr. Khandeparkar on instructions.

IV) The exercise of marking the said documents to be carried out by the Learned Principal Judge of the Family Court prior to the recommencement of the cross-examination of the Respondent. The same to commence on

10.03.2016 when the matter is slated before the Family Court and to be completed within three days being the outer limit.

V) In so far as the documents which are mentioned in the impugned order which are to be marked as exhibits, the impugned order to the said extent is retained. However, the rest of the impugned order stands set aside and to be substituted by the instant order.

VI) The Learned Counsel for the parties are agreeable to the aforesaid course of action being followed.

6. The Petition is allowed to the aforesaid extent. Rule is accordingly made absolute, with parties to bear their respective costs.

[R.M. SAVANT, J]