

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5102 OF 2014

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr.Sunil C. Patel for the petitioner

CORAM : K. K. TATED, J.
DATE : MARCH 17, 2016

P.C.:

- 1 Heard the learned counsel for the petitioner.
- 2 Though the respondents are duly served, no one appeared on behalf of them when the matter was called out.
- 3 Advocate for the petitioner filed affidavit of service dated 11.2.2015 stating that notice was duly served on the respondents by hand delivery on 6.2.2016. The said affidavit was duly affirmed by Mr.Anil D. Lokhande working as a clerk in the office of M/s.Sunil and Co. Advocates and Solicitors.
- 4 By this petition, under Article 227 of the Constitution of India, petitioner is challenging the order dated 13.1.2014 passed by Small Causes

Court, Mumbai rejecting petitioner's application for not exhibiting the documents.

5 The learned counsel for the petitioner submits that in L.C.Suit No.130 of 2012 the petitioner filed list of documents as Exhibit-13. Along with that application, following five documents were annexed:

- a) Share certificates
- b) Bill of maintenance charges issued by the Co-operative Housing Society.
- c) Bill of maintenance charges issued by the Co-operative Housing Society.
- d) Copy of electricity bill issued by Electric Company.
- e) Copy of Gift Deed dated 12.9.2012 of petitioner as well as his father.

6 The learned counsel for the petitioner submits that gift deed was referred by the petitioner in his affidavit of evidence on page 50 in paragraph 8 which reads thus:

“8. Thereafter by a deed of gift dated 12.09.2012, the Plaintiff and his father completed the formalities by executing and registering the deed of gift of the suit premises in favour of the Plaintiff. The said deed of gift is duly stamped and registered under no.7656/1 of 2012 on 12.09.2012. I tender

the deed of gift dated 12.09.2012. I tender the copy of the same to the society. The same may be taken on record and exhibited.”

7 The learned counsel for the petitioner submits that the said gift deed was duly registered under 7656/1 of 2012 on 12.9.2012. He submits that though it was specifically stated by the petitioner in his affidavit of evidence that plaintiff and his father completed the formalities by executing and registering the deed of gift of the suit property, inspite of that the Trial Court failed to take on record and marked as Exhibit. Hence, the order passed by the Trial Court dated 13.1.2014 is required to be set aside directing Trial Court to exhibit all the documents produced by the petitioner.

8 Heard the learned counsel for the petitioner.

9 After perusing the order passed by the Trial Court dated 13.1.2014 it is clear that the petitioner has not proved the documents except gift deed. The Trial Court specifically stated that the petitioner plaintiff has to prove contents of those documents. The Trial Court failed to reject the petitioners application for exhibiting the Gift Deed dated 2.9.2012 though the same was specifically stated and referred in plaintiff's affidavit of

evidence in paragraph 8.

10 Considering these facts, I am of the opinion that the Trial Court ought to have exhibited the gift deed dated 12.9.2012. In view of these facts, I am of the opinion that petitioner has made out a case for partly allowing the Writ Petition. Hence, following order is passed:

- a) Order passed by Trial Court dated 13.1.2014 is partly modified directing Trial Court to take on record gift deed dated 12.9.2012 and mark as Exhibit.
- b) In respect of remaining documents, petitioner to take appropriate steps according to law.
- c) Petition stand disposed of accordingly.

JUDGE