

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Writ Petition No.5487 of 2016
(Shri Minazuddin s/o Kamaruddin Malanas v. Municipal Council, Darwah,
District Yavatmal, and another)

Office Notes, Memoranda of Coram,
appearances, Court's orders or directions Court's or Judge's orders
and Registrar's order

Shri S.R. Deshpande, Advocate for Petitioner.

Coram : R.K. Deshpande, J.
Date : 17th October, 2016

The challenge in this petition is to the order dated 27-7-2016 passed by the Trial Court rejecting the application filed by the petitioner-defendant No.1 for de-exhibiting the document at Exhibit 41. The Trial Court has held that the defendant No.1 has raised an objection to the admissibility of certified copy of the sale-deed dated 11-6-1966 in evidence. But that objection was rejected during the course of examination-in-chief of the then Chief Officer of the Municipal Council, Shri Atul Pant. Shri Deshpande, the learned counsel appearing for the petitioner, submits that the said Chief Officer is not made available for cross-examination, but the another Chief Officer, who has been posted by way of transfer in his place, viz. Gopichand Pawar, had appeared in the matter and who is under cross-examination.

The Trial Court has held that the evidentiary value of the

document at Exhibit 41 will be decided at the final stage. The another question, which arises for consideration, is whether the evidence of the witness-Atul Pant, who did not subject himself to cross-examination, can be admitted or accepted as admissible evidence. The Trial Court will also have to consider this aspect of the matter. Even if it is taken that the objection to mark the document as Exhibit is rejected by the Trial Court, it is open for the petitioner to file a pursis stating that without prejudice to his right to challenge this order, he shall proceed to cross-examine the witness on the basis of such document. The order impugned dated 27-7-2016 can be made a subject-matter of challenge in regular civil appeal, if such occasion arises, and if at that time, the Court considers that the document is inadmissible in evidence, the evidence led further shall be ignored.

In view of this, no interference is called for at this stage. The petition is dismissed, keeping all the questions open.

Judge.

Lanjewar