

THE HONOURABLE MR JUSTICE VILAS V. AFZULPURKAR

CIVIL REVISION PETITION No.902 of 2016

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ORDER

The petitioners, who are defendants, filed an application seeking to eschew the marked documents Exs.P1 to P3, Exs.P6 to P9 and Exs.P11 and Ex.P13 on the ground that those documents are in the nature of secondary evidence and are marked by the plaintiffs without establishing the ingredients of Section 65 of the Indian Evidence Act, 1872 (for short 'the Act'). The Court below rejected the said application on the ground that the petitioners did not raise any objection at the time of marking the documents and that the said documents were marked in the presence of the junior counsel for the petitioners, but he did not raise any objection. That order is questioned in this revision.

2. Heard Sri V.S.R.Anjaneyulu, learned counsel for the petitioners.

3. The marked documents in a trial cannot be eschewed by way of an application of one of the parties as rightly observed by the Court below. The objection for marking the documents ought to have been raised when the said documents were marked in the open Court in the presence of the counsel for the petitioners. A similar situation with regard to the objection U/s.35 of the Indian Stamp Act, 1899 (for short 'the Stamp Act'), applies to the present case also. Though unlike Section 35 of the Stamp Act, once a document is marked, the other side is precluded from objecting to

it. In the present case, since the objection is U/s.65 of the Act, I am inclined to permit the petitioners to raise the contention regarding non-compliance of Section 65 of the Act with respect to aforesaid documents at the time of final hearing of the suit. The said liberty is granted to the petitioners as there is no bar similar to Sec.36 of the Stamp Act. However, interference with the impugned order is not justified on any ground.

4. Hence, the Civil Revision Petition is dismissed with the liberty above. No order as to costs. Miscellaneous petitions, if any, pending in this revision shall stand dismissed.

VILAS V. AFZULPURKAR, J

26th February, 2016

sj