

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4421 OF 2017
(Govind Kashinath Phutane Vs. Mukunddas s/o Bansilalji Soni and
another)

Mr.P.S.Paranjape, Advocate for the petitioner.
Mr.S.S.Gangakhedkar, Advocate for respondent No.1.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 18/09/2017

PER COURT :

1. The petitioner is aggrieved by the order dated 17/12/2016 by which the application filed by the petitioner/defendant under Order 13 Rule 8 of the CPC, has been rejected.

2. The petitioner points out from paragraph No.4 of the written statement filed in RCS No.41/2012 by the petitioner to support his contention that the so called document at issue, which is Exhibit 39, is neither a Lease Agreement nor is it any contract between the plaintiff and the petitioner. The very existence of the said document is denied. It is categorically stated in the said paragraph that the rent note was never executed by the petitioner or his grand father in favour of the plaintiff. The terms and conditions of rent as alleged are also denied and no such agreement had taken place. The

signature of the two witnesses is also denied.

3. Having considered the submissions of the learned Advocates for the respective sides, I find that the petitioner himself had filed Exh.62 under Section 34 of the Bombay Stamp Act. When the petitioner is denying the very existence of the document and is contending that no such document is in existence, the Trial Court has rightly concluded that the said "*Kirayanama*" is not required to be forwarded for impounding.

4. Learned Advocate for the respondents has stated that the title of the document Exh.39 is "*Kirayanama*" which would mean a rent note. If the defendant is denying the existence of the said document, the same could be dealt with in a manner as is provided in the Indian Evidence Act r/w the provisions of the CPC.

5. Mr.Paranjape, learned Advocate for the petitioner is aggrieved that some observations about the rent note have been made by the Trial Court while passing the impugned order touching the probative value of the document and that too before the recording of the evidence. I find that the said apprehension of the petitioner is misplaced as granting of an Exhibit number to a document is not

indicative that the document is proved in evidence. Exhibit 39 will have to be subjected to the proper course under the Indian Evidence Act and only thereafter, once the contents are proved, the Trial Court would consider its probative value.

6. Considering the above, this petition is dismissed.

7. CA No.8858/2017 has been wrongly tagged with this petition. In so far as Civil Application No. 8858/2017 is concerned, the said Civil Application has been filed in Writ Petition No. 7577/2017. Shri Gangakhedkar, learned advocate submits that his client original respondent No. 1 has filed the Civil Application. The same is infructuous as the Writ Petition No. 7577/2017 has already been disposed of by this Court as being infructuous on 14/07/2017. Consequentially, this Civil Application is disposed of, as being infructuous.

(Ravindra V.Ghuge, J.)