

Santosh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8364 OF 2017**

Laxman Pandurang Sade (deceased) Through LRs Nandkumar Laxman Sade	...Petitioners
<i>Versus</i>	
PV George	...Respondent

Mr Nandkumar L Sade, *Petitioner in person present.*
None *for the Respondent.*

CORAM: G.S. PATEL, J
DATED: 14th November 2017

PC:-

1. **Rule.** The Respondents are absent though served. Hence Rule made returnable forthwith. The issue is narrow and can be disposed of very shortly.

2. The Petitioner appears in person. His Writ Petition has been adjourned repeatedly for service on the Respondent, who is the Defendant to an ejectment suit. I find that there is an Affidavit of Service dated 8th August 2017 and that the Petitioner has in fact served the Defendant's Advocate in the Court of Small Causes where the trial even now going on, the next scheduled date being 8th December 2017.

3. The challenge is quite correctly taken to an Appellate order dated 9th March 2017. The Defendant filed a Revision Application before the Appellate Bench against an order of the Trial Court marking a document in evidence.

4. In my view the Appeal Court materially misdirected itself. The Petitioner is correct in saying that the Revision Application did not lie. Apart from anything else the Appeal Court seems to have completely overlooked the provisions of Order XIII Rule 3 regarding documents produced in cross-examination. It also completely lost sight of that fact that a documents once exhibited, whether rightly or wrongly, cannot be directed to be “de-exhibited”. There is no such procedure known to law and it is always possible for a party to argue at the final hearing that the document in question lacks the necessary evidentiary value. It cannot be taken off the record in this fashion.

5. Finally the order of the Trial Court is not one that decided the rights of the parties. It was purely procedural. The observations in the order that there is an illegality on the face of the record of the order of the Trial Court and that the order of the Trial Court is illegal, improper and incorrect were wholly unwarranted. If anything, these observations are true of the appellate order, not of the order of the Trial Court.

6. The Appellate order is quashed and set aside. Rule is made absolute in these terms. The document marked as Exhibit 121 will be taken in evidence.

7. It will be open to the Defendant to argue that this document has no evidentiary value and all contentions in that behalf on both sides are expressly kept open.

8. The Trial Court will act on production of an authenticated copy of this order.

(G. S. PATEL, J.)