

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3808 OF 2013

Shri Mithul Narendra Makwana	... Petitioner
v/s	
Smt Ratna Sampt Thete and others	... Respondents

Mr R.D. Soni I/b M/s Ram and Co. for Petitioner.
Mr R.D. Deshmukh for Respondent Nos.1 to 3.
Mr Girish R. Agarwal for Respondent No.4.

CORAM : B.P. COLABAWALLA J.

DATE : 29TH NOVEMBER, 2018.

P.C. :-

1. This Writ Petition challenges the order passed by the Trial Court dated 8th February 2013 passed below Exh.1 in Special Civil Suit No.408 of 2008. In this case, the Plaintiff made an oral request that the documents filed by the Plaintiff at Sr.Nos.1 to 12 with the list (Exh.26) should be marked as exhibits as they have been proved by the Plaintiff during his evidence. This request of the Plaintiff was turned down by the Trial Court by a detailed reasoning in the impugned order. The Trial Court has referred to several sections of Indian Evidence Act as to why these documents could not

have been marked as exhibits.

2. Mr Soni, learned counsel appearing on behalf of the Petitioners submitted that the Trial Court had gone completely wrong in not exhibiting these documents as they were duly proved in the affidavit of evidence in chief. This is more so, according to Mr Soni, when one takes into consideration that the Plaintiff was cross-examined by the Defendants on these documents. This being the case, Mr Soni submitted that the Trial Court could not have come to the conclusion that these documents could not be exhibited.

3. I am not impressed with this argument. It is not disputed that the trial is still going on. Section 105 of the C.P.C. clearly provides that where a decree is appealed from, any error, defect or irregularity in any order, affecting the decision of the case, may be set-forth as a ground of objection in the Memorandum of Appeal. If the Plaintiff suffers the dismissal of the Suit on the ground that these documents were not exhibited when they should have been, it will always be open to the Plaintiff to challenge the order impugned in this Writ Petition when he challenges the final decree passed by the Trial Court.

4. This being the case, I do not think that this Writ Petition

needs to be entertained at this stage. It is accordingly dismissed.
There shall be no order as to costs.

It is made clear that I have not opined anything on the merits of the contentions canvassed by Mr Soni and all issues are expressly kept open to be agitated at the appropriate stage.

(B.P. COLABAWALLA J.)