

dik

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 6688 OF 2013

Gurumukh J. Sukhwani & Ors.

...Petitioners.

vs

Joharsing Sarvansingh Malhotra

...Respondent.

.....

Mr D.S.Patil for the Petitioners.

Mr P.B.Shah a/w Mr Kayval P. Shah for Respondent No.1.

.....

**CORAM : B.P.COLABAWALLA, J.
NOVEMBER 30, 2018.**

P.C. :

This Writ Petition has been filed seeking to challenge the Judgment and Order dated 16th March, 2013 passed by the learned 5th Joint Civil Judge, Senior Division, Pune below Exh.69 in Special Civil Suit No. 16 of 2007. Exh. 69 was an application filed by the Defendant in which it was contended that Exhs. 47 and 48 are not admissible in evidence and hence were required to be de-exhibited. The Trial Court after hearing the parties, rejected this application by a reasoned order. It is taking an exception to this order that the present Writ Petition has been filed.

2

After hearing the parties, I am not inclined to entertain

this Writ Petition. This is for the simple reason that Section 105 of the Code of Civil Procedure, 1908 clearly stipulates 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.

3 In the present case, if a decree is passed against the Defendant, it will always be open to him to even challenge the order impugned herein as and when he challenges the final decree. This being the case, I do not find that this Writ Petition ought to be entertained at this stage. It is, accordingly, dismissed. However, there shall be no order as to costs.

4 It is made clear that I have not opined on the merits of the case and have dismissed the petition only on the ground that this order can be challenged at a subsequent stage by the petitioner as and when he suffers a decree.

(B.P.COLABAWALLA, J.)