

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 9307 OF 2018

Sanjeev Sudamrao Abnave

...Petitioner

Versus

Rupali Sanjeev Abnave

...Respondent

....

Mr. Abhijit D. Sarwate, Advocate for the Petitioner.

Mr. Ajinkya Udane, Advocate for the Respondent.

....

CORAM : R. G. KETKAR, J.

DATE : 03rd SEPTEMBER, 2018

P.C.

1. Not on board. At the request of Mr.Sarwate taken up for admission.
2. Heard Mr.Abhijit Sarwate, learned counsel for the petitioner, at length.
3. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged marking of exhibits on 4.8.2018 to the documents produced by the respondent-wife as per list Exhibit-225. In support of this Petition, Mr. Sarwate invited my attention to the observations made by the learned trial Judge while marking documents as per list Exhibits-225. The learned trial Judge referred to the Full Bench decision of this Court in **Hemendra Rasiklal Ghia v. Subodh Mody, 2008 (6) ALL MR 352**. After referring to the Full Bench decision, the learned trial

Judge observed that the said judgment is not dealing with Section 14 of the Family Courts Act, 1984 (for short, 'Act'). The learned trial Judge thereafter proceeded to mark all the documents as Exhibits tentatively and only in an administrative manner subject to all just exceptions and subject to determining their admissibility and legality in final hearing. He invited my attention to paragraph-75 of the Full Bench decision which reads thus:

“75. If the objection to the proof of document is not decided and the document is taken on record giving tentative exhibit, then the right of the cross-examiner is seriously prejudiced. Once the document is used in cross-examination, then the document gets proved and can be read in evidence as held by the Supreme Court in the case of Ram Janki Devi vs. Juggilal Kamlapat, 1971 (1) SCC 477. If the cross-examiner decides not to cross-examine based on unexhibited document and, ultimately, at the fag end of the trial, the document is held to be admissible and proved, then, the cross-examiner as a rule of fair play would be entitled to further opportunity to cross-examine based on that document resulting in delayed trial defeating the very object and purpose of the amendment to the C.P.C..”

4. Mr. Sarwate submitted that if the documents are exhibited and the petitioner does not cross-examine the respondent's witness on these documents the learned trial Judge will proceed on the premise that the respondent has proved the contents of these documents. He has also invited my attention to some of the documents produced by the respondent-wife which do not bear the signature of the author as also which does not indicate whether they are pertaining to the respondent,

such as, shoes, grocery, medical bills etc. In other words these bills do not indicate that the respondent has purchased these items as claimed by her. Apart from that he invited my attention to the affidavit of examination-in-chief filed by the respondent where no reference is made to any of the documents as per list Exhibit-225. He, therefore, submitted that marking of Exhibits to the documents as per list Exhibit-225 may be set aside.

5. I have considered the submissions advanced by Mr.Sarwate. I have also perused the material on record. Section 14 of the Act reads thus:

“14. Application of Indian Evidence Act, 1872.- A Family Court may receive as evidence any report, statement, documents, information or matter that may, in its opinion, assist it to deal effectually with a dispute, whether or not the same would be otherwise relevant or admissible under the Indian Evidence Act, 1872 (1 of 1872).”

6. A perusal of Section 14, extracted hereinabove, shows that the Family Court is empowered to receive as evidence any report, statement, documents, information or matter that may, in its opinion, assist it to deal effectually with a dispute, whether or not the same would be otherwise relevant or admissible under the Indian Evidence Act, 1872. Thus the only test relevant is whether the documents will help the Family Court to deal effectively with the dispute between the parties. The Family Court is empowered to receive these documents whether or not the same would be otherwise relevant or admissible under the Indian Evidence Act, 1872.

7. Mr.Sarwate relied upon paragraph-75 of the Full Bench decision in **Hemendra Ghia** (supra). A perusal of that decision shows that Full Bench was considering marking of documents in the suit. The proceedings were undoubtedly arising from the suits filed in the Civil Court. In view thereof, the learned trial Judge rightly held that the said decision is not applicable in the proceedings before the Family Court in view of Section 14 of the Act. At the same time, while marking Exhibits, the learned trial Judge has kept all just exceptions of the petitioner open and made such exhibition of documents subject to determining their admissibility and legality in final hearing. In view thereof, no case is made out for invocation of powers under Article 227 of the Constitution of India. Hence, Petition fails and the same is dismissed.

8. It is made clear that where a decree is appealed from by the petitioner, 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 as contemplated by section 105(1) of C.P.C.

(R. G. KETKAR, J.)

Deshmane (PS)

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by Pradipkumar
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