

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 1748 OF 2018

Rajeev Nimba Patil ... Petitioner
Versus
Aakansha Co-operative Housing Society (L)
Avhane, Tq. & Dist. Jalgaon and others ... Respondents

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Mr. S. M. Kulkarni, Advocate for petitioner.
Mr. V. P. Patil, Advocate for respondent Nos. 2, 4, 6 and 7.
Mr. A. J. Patil, Advocate for respondent No.3.
Mrs. M. A. Deshpande, AGP for respondent No.5-State.

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CORAM : M. S. KARNIK, J.

DATED : 13th AUGUST, 2019

PER COURT :-

1. Heard learned counsel for the petitioner and learned counsel Mr. V. P. Patil, appearing for respondent Nos. 2, 4, 6 and 7. He states that he appears on behalf of respondent No.1 also. Learned AGP appears for respondent No.5. Learned counsel Shri A.J. Patil appears on behalf of respondent No.3.

2. The order under challenge is passed below Exhibit-114 in Regular Civil Suit No.72 of 2014, rejecting an application filed by the plaintiff to exhibit the documents at serial No. 2, 3, 7 to 12 filed with

list Exhibit-4 and at serial No.1 and 2 filed with list Exhibit-102 and say endorsed on it by the counsel for the defendant Nos. 1 to 3. The application is rejected on the ground that the plaintiff had requested to give exhibit numbers to the documents which are private documents and not the public documents. The trial Court observed that the plaintiff is required to prove the documents by following the provisions contained under the Evidence Act. It is further observed that the plaintiff had not proved the documents in the evidence of witnesses examined by him. In the opinion of the trial Court the same are not directly admissible in the evidence without proving the same. Therefore, the Court did not give exhibit numbers to the said documents.

3. It reveals from record, that when the application was heard the plaintiff and his counsel remained absent, though they were repeatedly called. Learned counsel for the petitioner orally submits that the counsel for the plaintiff was in the midst of hearing in another matter. He tenders his apology for not remaining present. He, however, submits that this happened inadvertently. Learned counsel for the petitioner submitted that for the disputed premises in question the plaintiff had paid the installments for the loan. He further submits that he was put in possession of the suit premises and that the plaintiff had paid the

loan amount. An attempt was made by learned counsel for petitioner to contend that in fact, when the plaintiff was in the witness box, these documents were shown to the trial Court. However, he contends that this stand of learned counsel for plaintiff is not borne out from the materials on record.

4. In my opinion, considering the plea taken by the plaintiff that the documents pertain to payment of the loan in respect of the suit premises, an opportunity needs to be given to the plaintiff to enable him to contest the application Exhibit-114 afresh.

5. Learned counsel for the respondents opposed the request made by the learned counsel. He would submit that the examination of the plaintiff's witness is already over and therefore, without proving these documents the plaintiff wants the Court to give exhibit numbers to the documents which is not permissible. According to him, as per the provisions of law, it is for the plaintiff to prove the documents.

6. Considering that the advocate for the plaintiff was not present when application Exhibit-114 was heard, in my opinion, having regard to the facts of the present case, it would be in the interest of justice, if the plaintiff is given one opportunity to pursue application Exhibit-114 for a fresh decision on its own merits.

7. Only as and by way of indulgence, the impugned order is set aside, subject to costs of Rs.2,000/- to be deposited by the petitioner-plaintiff in the trial Court. After depositing the costs, the trial Court to hear application Exhibit-114 afresh on its own merits and in accordance with law without being influenced by any of the observations made by me and by trial Court in the impugned order.
8. The writ petition is disposed of.

[M. S. KARNIK, J.]

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