

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1833 OF 2019

RAJARAM YASHWANTRAO WARKHINDE AND OTHERS
VERSUS
THE NANDED DISTRICT CENTRAL CO-OPERATIVE BANK LTD

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Advocate for Petitioners : Shri Salunke V.D.
h/f Shri Ghatol Patil Shahaji B.
Advocate for Respondent 1 : Shri Suryawanshi K.J.
Advocate for Respondent 2 : Shri Kawale L.H.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: July 11, 2019

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PER COURT :-

1. I have heard the learned Advocates appearing for the respective parties. With their assistance, I have gone through the petition paper book and the judgments cited.

2. The grievance of the petitioners is that the Cooperative Court, Nanded has rejected application Exhibit 108, vide order dated 27.11.2018 and has rejected the request of the petitioner to de-exhibit certain documents. The petitioners are also aggrieved by the judgment dated 19.1.2019, delivered by the Cooperative Appellate Court, dismissing Revision No.43 of 2018, filed by the petitioners.

3. The grievance of the petitioners is that the Cooperative Court

has granted exhibit numbers 78 to 84, to certain documents, which the Bank claims to be certified copies of the originals. These copies were not supplied to the petitioners or their Advocate and in the absence of these petitioners, the trial Court has granted exhibit numbers. The petitioners, therefore, moved an application Exhibit 108, praying for de-exhibiting these documents. The trial Court has rejected the said application on the grounds that, firstly, there is no provision for de-exhibiting the documents and secondly, the documents are certified copies and have a presumptive value.

4. Learned Advocate for the petitioners, therefore, raises a grievance as to how can certified copies be prepared in the absence of original documents. The further grievance of the petitioners is that the trial Court is aware that the Bank does not have original documents.

5. The Cooperative Appellate Court, in my view, has rightly recorded that merely because the documents are granted exhibit numbers, would not convert them into admissible evidence and they cannot be read in evidence until these documents are proved by the party producing the documents in the light of Section 62 of the Indian Evidence Act.

6. This Court has held in the case of Sunil Tukaram Bharadkar Vs. Santosh Gopichand Rane [2006 (3) Mah.L.J.811], that there cannot be an order of de-exhibiting the documents. Granting of exhibit numbers would not mean that the documents are proved and the trial Court could consider its contents. The party producing the documents has to prove its contents, failing which, the trial Court would not read the documents, even if they are granted exhibit numbers.

7. A similar view has been taken in Writ Petition No.8569 of 2016 - Sultan Vs. Mrs. Anita, decided on 18.8.2016 at the Principal Seat at Mumbai and in the matter of Sau. Ankitabai Vs. State of Maharashtra and others - Writ Petition No.5577 of 2016, decided at Aurangabad on 21.8.2018.

8. In the matter of Hemendra Rasiklal Ghiya Vs. Subhodh Modi [2008 (6) Mah.L.J. 886], the learned Full Bench of this Court concluded that the objections to the admissibility or relevancy of the evidence contained in the affidavit can be considered at any stage and such admissibility or proof of the document must be decided at the stage of which it arises.

9. Considering the above, this petition is partly allowed only to

the extent of setting aside the observations of the trial Court that the said documents exhibited at Nos. 78 to 84 have a presumptive value. The petitioners would be at liberty to disprove the said documents, inasmuch as, the party producing the documents would be under a legal obligation to prove its contents by adopting such modes as are permissible under the Indian Evidence Act. Merely because the documents are exhibited would not mean that the trial Court would presume that the contents of the said documents are proved.

(RAVINDRA V. GHUGE, J.)

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