

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

WRIT PETITION NO.8764 OF 2018

1. Kumarpal N. Shah (since deceased) ...Petitioners
through Lrs.

1.Mrs. Tarunbala Kumarpal Shah
(wife of the deceased Plaintiff)

2. Mr.Jayesh Kumarpal Shah
(son of the deceased Plaintiff)

3. Mr.Biren Kumarpal Shah
(son of deceased Plaintiff)
All are residing at Kumarpal Niwas,
28, Prarthana Samaj Road,
Vile Parle (East), Mumbai 400 057

Versus

1. M/s. Universal Mechanical Works Pvt. Ltd. ...Respondents
A private limited company, duly registered
Under the Companies Act, 1956 and
Having its registered office at Block No.433
Amrutar Marg, Opp. B.D.D. Chawl No.144
Worli, Mumbai 400 018.

2. Puranmal S. Agarwal
Having office opp. B.D.D. Chawl No.144
Amrutar Marg, Worli, Mumbai 400 018

3. M/s Aabeearr Industrial Estate (Pvt.) Ltd.
A private limited company, duly registered
Under the Companies Act, 1956 and
Having its registered office at
Amrutar Marg, Chawl No.144,
Opp. B.D.D, Chawl No.144,

Opp. B.D.D. Chawls, New Survey No.
3/2785 and Cadastral Survey No.433 of
Lower Parel Division, Street No.1172,
Worli, Mumbai 400 018

4. M/s. Bombay Polmers Ltd.
A Public Limited Company, duly registered
under the Companies Act, 1956 and having
its registered address at Shed No.2
Aabeearr Industrial Estate Pvt. Ltd.,
C.S. No.433, Amrutar Marg,
Chawl No.144, Opp. B.D.D. Chawls
Worli, Mumbai 400 018, and Unit No.318
Mahalaxmi Industrial Estate Premises
CHS Ltd., D.C. Road, Gandhi Nagar,
Mumbai 400 013

5. Industrial Marketing Corporation
A Sole Proprietorship firm carrying on its
Business at Amrutar Marg, Chawl No.114,
Opp. B.D. D. Chawls, Worli, Mumbai 400018
and Unit No.318, Mahalaxmi Industrial Estate
Premises CHS Ltd., D.C. Road,
Gandhi Nagar, Mumbai 400 013

6. M/s.Daily Bread 'N' Foods
A firm carrying on business at Shed No.3
Aabeearr Industrial Estate, Amrutar Marg,
Chawls No.114, C.S. No.433, Worli,
Mumbai 400 018

7. M/s Cagterbility
A firm carrying on business at Shed No.4
Aabeearr Industrial Estate, Amrutar Marg,
Chawls No.114, C.S. No.433, Worli,
Mumbai 400 018 and C/o Moshe's D
198/3, TTC Industrial Area, MIDC
Kukshet Village, Navi Mumbai 400 705.

8. M/s. Crative Lights (P.) Ltd.

A Public Limited Company, duly registered under the Companies Act, 1956 and having its address at Shed No.5 at Aabeearr Industrial Estate Pvt. Ltd., Amrutar Marg, Chawl No.114, Opp. B.D.D. Chawls, Worli, Mumbai 400 018 and C/o Shri Mahendra Palan, 45/47 Lohar Chawl, Mumbai 400002

9. M/s. Nursing Sahay Mudangopal (Bombay)

A firm carrying on business at Shed No.5 Aabeearr Industrial Estate Pvt. Ltd. Amrutar Marg, Chawl No.114, Opp. B.D.D. Chawls, C.S. No.433, Worli Mumbai – 400 018 and C/o Mahendra Palan 45/47 Lohar Chawl, Mumbai.

10. M/s. Classic Luminor (P) Ltd.

A Private Limited Company duly registered under the Companies Act, 1956 and having its address at Shed No.5 Aabeearr Industrial Estate Pvt. Ltd. Amrutar Marg, Chawls No.114, Opp. B.D.D. Chawls C.S. No.433, Worli, Mumbai – 400 018

11. The Book Centre Ltd.

Having its registered office at 1st floor, L.I.C. Building, Ranade Road, Dadar (West) Mumbai 400 028 and 103, Plot, 172, Mumbai Marathi Granthsangrahala Bldg. M.M.G.S. Marg, Dadar (E) Mumbai 400 014.

12. Mrs.Taubon Ferdoon Irani

19, Armaann Villa, Marlcolm Baug, Jogeshwari (West), Mumbai 400 102

Mr.Jahangir Jeejeebhoy a/w Ms.Shweta Dadi i/b. Bilawala & Co. for the petitioner.

Mr.Mehervan R. Irani for respondent nos.3, 6, 8 to 10.

Mr.Sameer Bhalekar a/w Mr.Vidita Bhalekar i/b. Ms.Ranjana Parikh for respondent no.11.

Ms.Disha Shettyi i/b. Mr.Taubon F. Irani for respondent no.12 in-person.

CORAM : DAMA SESHADRI NAIDU, J.

DATE : 7th AUGUST 2019.

JUDGMENT:

1. Rule. Rule made returnable forthwith. Heard finally by the consent of the parties.

2. Initially, the landlord filed R.A.E. & R. Suit No.995/1485 of 2006, seeking the eviction of respondent-tenant. Later, he died. Then, his wife and children (“the owners”) brought themselves on record as the legal representatives. First, the owners applied under Exh.98 seeking the trial Court’s leave to mark a bunch documents as secondary evidence under Section 65(f) of the Indian Evidence Act. The trial Court allowed that application through its order, dated 28th February 2018. That order has not been disturbed.

3. Later, one of the owners, that is the 3rd plaintiff, filed the “affidavit in lieu of examination-in-chief” before the trial Court with a list of documents to be marked. Then, the tenants filed written objections against the marking of certain documents. According to them, they are private documents required to be marked through the authors of those documents. Then, the trial Court through its order,

dated 5th July 2018, upheld most objections the tenants' raised. Aggrieved, the owners have filed this writ petition.

4. As it is an objection at an interlocutory stage about marking of the documents, I am not dwelling deep into the factual background. Rather, I will confine my discussion to a singular aspect: Can PW1 get all the documents marked through himself irrespective of their origin or nature?

5. Shri Jeejeeboy, the learned counsel for the petitioners, has submitted that earlier the trial Court through its order, dated 28th February 2018, had ruled on the nature of the documents. It has, in fact, held that the documents the owners secured under the Right to Information Act are public documents. So the tenants should have no objection about their marking. In the alternative, Shri Jeejeeboy has submitted that all the documents except documents 1 and 2 are public documents, and they have been supplied by a competent authority, in terms of Section 74 of the Indian Evidence Act. That accepted, the tenants' objections pale into insignificance.

6. Shri Jeejeebhoy has taken me through each document that was refused to be marked and explained the circumstances under which the owners secured those documents. Then, he has asserted that the objections that found favour with the trial Court could not stand legal scrutiny.

7. To support his contention Shri Jeejeebhoy has relied on ***Gulshan Sadruddin Vishram V. Gulshan Allauddin Vishram***¹ an

¹ Writ Petition No.2209 of 2015

unreported judgment of this Court, rendered by a learned Single Judge on 28th July 2015.

Respondents’:

8. In response, Shri Meheran Irani, the learned counsel for the respondent Nos.3, 6, 8 to 10, has submitted that the petitioners may have secured most documents through RTI Act. It does not mean, according to him, all the documents are public documents. Plainly put, if the documents have not been authored by the person through whom they are sought to be marked, then, even if the documents were secured through RTI, they must be treated only as secondary.

9. Shri Irani, therefore, maintains that the respondents' objections are sustainable. And, by the same reckoning, the trial Court reasoning in its order, dated 5th July 2018, is unexceptional. Shri Irani has emphasised on a couple of documents—especially the certified copies from the Registration Office and the Returns from the Registrar of Companies—to contend that they should not be treated as public documents. On this count, Shri Irani has, first, contended that the owners are not clear whether they have secured the Returns under RTI or directly from ROC. Second, he has submitted that the ROC has long back dispensed with the practice of issuing physical copies of Returns. The prevailing practice, he stresses, is that any person can have access to ROC Web-Portal, through a professional like a Chartered Accountant, and secure the documents by downloading them, of course, by paying the requisite fee. So, once the source of the document is doubted, Shri Irani maintains, its authenticity also remains doubted. In that event, the

burden lies on the party relying on the document to have it marked through the person connected with that document.

10. Shri Irani has also submitted that most documents are stated to be certified copies, but they are not. Instead, they are only photocopies attested to by the authorities concerned as true copies. Unless those authorities are examined, the authenticity of the documents cannot be vouched for. To support his contention, Shri Irani has relied on *Datti Kameswari v. Singam Rao Sarath Chandra*.²

11. Shri Irani has also relied on *Dr. Gurmukh Ram Madan v. Bhagwan Das Madan*³ for the proposition that any secondary evidence is admissible under Section 64 (cf) of the Indian Evidence Act only if the original documents are public documents. According to Shri Irani, most documents the owners relied on are private documents, perhaps, secured from the officials concerned.

12. In the end, Shri Irani has urged this Court either to dismiss the writ petition or to specifically comment that the trial Court should preserve the respondents' right to question the authenticity of the documents—especially their contents. In other words, Shri Irani has submitted that mere marking of documents will not prove the contents. The tenants' objections to the contents of the documents or their binding nature must remain unaffected. And the trial Court must consider those objections during the trial.

² AIR 2016 Hyderabad 112

³ Civil Appeal No.268 of 1991 decided on 31st August 1998.

13. The learned counsel for respondent No.11, Shri Sameer Bhalekar, has adopted the arguments advanced by the Shri Irani for the other respondents-tenants.

14. Indeed, before I could go into the merits, I must also address the objection Shri Irani has raised about the 1st respondent. According to him, the petitioner has so far not served notice on that respondent. But Shri Jeejeebhoy refutes that contention: he has showed me the earlier proceedings of this Court. This Court has already recorded its satisfaction about the deemed service of notice. So, that objection fails.

15. Now let us examine the case holding of ***Hemendra Rasiklal Ghia v. Subodh Mody***⁴. This Court's Full Bench has extensively treated the document marking, especially, in the backdrop of the Supreme Court's ***Bipin Shantilal Panchal v. State of Gujarat***⁵. After exhaustively analyzing the issues, ***Hemendra Rasiklal Ghia*** has categorized, in paragraph 71 of the judgment, the objections about document marking into three categories: (i) the objection to the documents insufficiently stamped; (ii) the objection about the mode of proof; and (iii) the objection about the document *ab initio* inadmissible in evidence.

16. Then, ***Hemendra Rasiklal Ghia*** has gone on to explain the procedure the trial Court should adopt under each category. About the second category, the full Bench has observed that once the objection is raised, it must be resolved there and then. So, if the court sustains that objection, the plaintiff or the defendant may mark the documents through a proper person or by adopting an acceptable procedure.

⁴ [2008(6) Mh.L.J.

⁵ AIR 2001 SC 1158

According to ***Hemendra Rasiklal Ghia***, if the other party does not object to the document marking, he should not be permitted to raise the admissibility in the midst of the trial.

17. Of course, if the objection concerns document *ab initio* inadmissible in evidence, the other party has the luxury of questioning the document at any stage. For the inherent inadmissibility remains incurable. Nor the principles of estoppel, in that context, apply. Here, I think the objections fall in the second category.

18. As seen from the record, the petitioners produced all documents and sought the trial Court's leave to mark them as secondary evidence under Section 65 of the Indian Evidence Act.

19. Initially, the trial Court allowed that application. In that process, it has observed that all those documents are public documents and that the plaintiffs can mark them during the trial. Indeed, the Supreme Court in ***Satyadhyan Ghosal v Deorajin Debi***⁶ has held that the "principle of *res judicata* applies also as between two stages in the same litigation." According to it, a decision given by a court at an earlier stage of a case is binding at a later stage of the same case, though interlocutory judgments are open for adjudication by an appellate authority in an appeal against the final judgment.

20. In ***Prahlad Singh v. Sukhdev Singh***⁷, the landlord sued the tenant for eviction, on the grounds of rent-default. On the first hearing day, the tenant deposited some amount, said to be the arrears of rent. In the written statement, the tenant also took the stand that he had paid rent for the remaining months, too. Later, the tenant absented

⁶ AIR 1960 SC 941

⁷ AIR 1987 SC 1145

himself; so the trial court decreed the suit *ex parte*. Then, the tenant filed a petition to have the *ex parte* decree set aside. He pleaded that the landlord had met him one day and told him that he would withdraw the eviction case. The landlord is also said to have received the cheques from him towards rent. Only because of that did the tenant not appear before the court for he had believed the landlord in good faith.

21. The trial court concluded that the tenant acted on the landlord's misrepresentation and did not attend the court. So the court found it to be sufficient ground; it set aside the *ex-parte* decree. After it set aside the decree, the trial court once again, on merits, ordered the eviction on the ground of default. The appellate authority and the High Court, too, confirmed the order of eviction. The tenant's plea that the eviction petition should not have survived was disregarded.

22. In that factual background, **Prahlad Singh** has observed that in the proceeding to set aside an *ex-parte* order, the trial court recorded an express finding that the landlord had agreed to withdraw the suit and receive the rent from the tenant. That was a finding binding on the landlord at later stages of the proceeding. He could have questioned the finding before the appellate authority and the High Court, in the appeals preferred by the tenant. He did not do so. In other words, **Prahlad Singh** has held the trial court's earlier observations to be non-interlocutory.

23. That proposition apart, I may still examine the documents the petitioners wanted to mark, to determine whether they are public or private documents, whether they could be marked through PW1,

one of the plaintiffs. This issue remaining unresolved, as was held in *Hemendra Rasiklal Ghia*, it may lead to further complications later.

24. But before we attempt that, we should know what a public document is or what is not. Section 74 of the Evidence Act does not define “public document”; it rather enlists the types of public documents. According to that section, these are the public documents:

- (1) documents forming the acts or records of the acts—
 - (i) of the sovereign authority,
 - (ii) of official bodies and tribunals, and
 - (iii) of public officers, legislative, judicial and executive, of any part of India or of the Commonwealth, or of a foreign country;
- (2) public records kept in any State of private documents.

25. And all other documents, as Section 75 states, are private. To begin with, the public documents enjoy a statutory presumption under Section 114 of the Evidence Act. Public documents are prepared by a public servant in discharge of his public duties; and they are available for inspection to public, in public office, during appointed time, sometimes for a fixed fee. A certified copy of a public document can be admitted in judicial proceedings and is, usually, proved by secondary evidence. That said, the court is bound to presume its genuineness from “the duly certified secondary copy.”

26. On the other hand, if a document is private, it suffers from certain shortcomings. But once it is admitted in any judicial proceeding, it cannot be treated as inferior evidence. For getting a private document admitted, its original—the primary evidence—is the best choice, and its marking must be through its author. If it is secondary, without proving one of the conditions laid down under

Section 65 of the Act, the secondary evidence of a private document cannot be admitted in judicial proceedings.

27. Section 65 of the Act permits the secondary evidence before the court under certain circumstances:

- (1) if the original is shown or appears to be in the possession or power of (a) a person against whom the document is sought to be proved, or (b) any person who has remained beyond the court's reach or its jurisdiction, or (c) any person legally bound to produce it but has not produced it despite notice under Section 66 of the Act. In all these case, the secondary evidence is allowed.
- (2) When the existence, condition, or contents of the original have been proved to have been admitted in writing by the person "against whom it is proved or by his representative in interest". Here the written admission is admissible as proof of the document.
- (3) When the original has been destroyed or lost, or when the party offering evidence of its contents cannot produce it in reasonable time. But this inability should not have arisen from his own default or neglect. Here, too, secondary evidence is allowed.
- (4) When the original is of such a nature as not to be easily movable.
- (5) When the original is a public document. Here, only the certified copy is permitted.

- (6) When the original is a document of which a certified copy is permitted by the Evidence Act, or by any other domestic law. Here, too, only the certified copy is permitted.
- (7) When the original consists of numerous accounts of other documents which cannot conveniently be examined in court. This applies when the fact to be proved needs the whole collection. Here, evidence may be given by any person who has examined those documents, and who is skilled in the examination of such documents.

28. Section 77 of the Act, however, allows certified copies to be produced in proof of the contents of the public documents or parts of the public documents. Indeed, the proof of different categories of public documents is provided under Section 78 of the Act; and Section 79 speaks of the presumption about the genuineness of certified copies.

29. Remembering the above statutory position, we will examine the documents the trial Court has refused to mark. They are document Nos. 26, 31, 34 to 37, 39 to 43, 44, 46 to 48, and 50. All these documents, one way or another, relate to the property the plaintiff claims to own—the suit property.

Now let me examine each document.

Remark in Impugned Order.	Marking in Evidence
<i>Document No.26:</i> It is a certified copy of Form No. 20B, along with an annual report. It was issued by the Registrar of Companies, in 2006.	It is a certified copy of a public document.

Document No.31: The Petitioner on 16th June 2009 applied under RTI Act to the Municipal Corporation of Greater Mumbai (MCGM) for the copies of inspection extracts. Those extracts, as recorded by BMC, relate to the suit property. A competent officer under the RTI Act supplied the copy on 3rd August 2009, along with a letter, dated 16th June 2009.	It is a public document.
Document No.34: It is a letter MCGM addressed to an architect connected the 11th defendant, informing him the permission granted to them had lapsed and that the permission would be revalidated on their submitting an NOC from the Lessor.	It is a public document.
Document No.35: The petitioner, under RTI, received a bunch of documents from MCGM, along with a covering letter. All the documents originate from MCGM.	It is a public document.
Document No.36: It is a letter from MCGM that it will not renew the respondents' permission without Written NOC of Lessor.	It is a public document.
Document No. 37: It is an advocate-commissioner's report along with photographs.	They form part of the record.
Documents No.39: Photographs said to have been taken by the witness himself.	In the absence of any negatives, the photographs become electronic evidence.

Document No.43: MCGM's Asst. Engineer issued a notice in August 2010 to the occupants of Shed No. 4. The Mahanagar Palika is said to have demolished an illegal structure in the same month. PW-1 secured the Asst. Engineer's communication under RTI.	CCs of Public documents
Document No.44: This document contains a certified copy of the observation note, dated 18.08.2010, MCGM issued under section 354(A) of the Act, and a CC of the letter, dated 21.08.2010, issued by the Asst. Engineer of MCGM, along with photographs.	CCs of public documents; even the photographs, too, were taken by the officials. They enjoy the presumption under Section 114 of the Act.
Document No.46: PW-1's communication to and reply from the MCGM.	One is primary evidence; the other a CC of public document.
Document No. 47: Again, this set of documents, too, are from MCGM, besides PW-1's letter under RTI.	-do-
Document No.48: It is similar to Document No47.	-do-
Document No.50: An application under RTI and the reply received from the MCGM for inspection of documents which includes documents (i) and (ii) at the Annexure 52, 52(i) and 52(ii).	-do-

Notes on the Objections:

Document No.26 is a CC of the Form No.20B along with Annual Report, dated 31st September 2006, issued by the Registrar of Companies. Indeed, Shri Irani has laid much emphasis on this document and contended that it not admissible. He has spoken about the prevailing practice now: getting the documents from the ROC's Portal, helped by a professional like an Auditor or Chartered Accountant. I am afraid, it may have been the established practice, but it does not exclude somebody's going to the authorities concerned in the ROC for certified copies. Besides, those documents pertain to 2007, when, as Shri Jeejeebhoy contends, the portal process was not in vogue. As they are certified copies issued by a competent authority, they are public documents.

Document No.31:

Document No.31 is PW-1's application and the copy of the official response. The application emanates from PW-1 and the reply is official response. They can be marked through PW-1.

Document Nos.34:

They are again PW-1's application and the official response.

Document Nos.35 & 36:

As I could see, the documents 35 and 36 are the official record from MCGM. PW-1 secured them through RTI. They are public documents.

Document no.37:

Document 37 is the report of the Court Commissioner, along with photographs. This document needs no specific marking for under Order 26, Rule 10(2) of Civil Procedure Code, they “form part of the record.”

Document No.39:

A bunch of photographs. PW-1 claims to have taken them. Earlier, marking of photographs faced no problem. Once a negative is produced, that became the primary evidence and the photograph, perhaps, secondary evidence. Now, with filmless cameras and cellular phones, film based photography is pass'e. So the photographs have become mere electronic evidence.

30. The advent of the computers and their accessories, and mobile phones signalled a massive revolutionary paradigm shift in multiple aspects of technology relating to recording of matter, sound and pictures and their communication, and the security of their split-second transmission across the continents by way of the amorphous but omnipresent “borderless world” of the Internet⁸.

31. Statutorily speaking, Section 3 of the Act treats electronic records as documentary evidence. Under Section 2 (t) of the Information Technology Act, 2000, "electronic record" means data, record or data generated, image or sound stored, received or sent in an electronic form or microfilm or computer-generated micro fiche. Section 4 of the IT Act provides legal recognition to electronic records:

Where any law provides that information or any other matter shall be in writing, or in the typewritten or printed form, then, notwithstanding anything contained in such law, such

⁸ Jack Goldsmith and Tim Wu, *Who Controls the Internet: Illusion of a Borderless World* (New York, 2006), as quoted in Nageswara Rao's *Indian Evidence Act*, 3rd Ed., Lexis Nexis, p.657

requirement shall be deemed to have been satisfied if such information or matter is--

- (a) rendered or made available in an electronic form; and
- (b) accessible so as to be usable for a subsequent reference.

32. In the above statutory backdrop, the learned author Dr. V. Nageswara Rao opines that a “computer printout” which for all practical purposes looks like ordinary document coming under the second category of Section 17 of Information Technology Act, 2000, is actually a document in the “electronic form” that falls under the third category of that section. Section 65B says that the printout shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original.

33. If the printout is taken by the “originator” or the owner of the data, and if he appends his manual or digital signature, the learned author reckons, there is no reason why it cannot be accepted as “primary evidence” without any certification under section 65B. But if the printout is produced by anybody else it can be treated as “secondary evidence” and the certification may be insisted upon. Of course, if an electronic record as such is used as primary evidence under Section 62 of the Evidence Act, the same is admissible in evidence without compliance of the conditions in Section 65B of the said Act.

34. Therefore, I hold that if PW-1 wants to mark the photographs per se without the electronic record—that is, the source of the photographs—he must comply with Section 65B of the Act.

Document no.43:

Document 43 is again an application to RTO by PW1. So are the document Nos.46, 47, and 48.

Document No.50:

They are the official documents from MCGM. They clearly answers Section 74 of the Indian Evidence Act

The Precedential Position:

35. Under RTI, usually the applicant gets photostatcopies of the documents which are certified as true copies. They cannot be equated with certified copies mentioned in the Evidence Act. In other words, if the official under RTI certifies and supplies a private document, it still remains a private document. Thus, the RTI Act does not affect the nature of a document.

36. In *Datti Kameswari*, a learned Single Judge of the High Court of Andhra Pradesh has held that the copies obtained under the Right to Information Act certified by the Authorised Information Officer cannot be termed public documents or primary evidence. Only if the original qualifies to be a public document, then does its certified copy. But if the original is a private document, its copy secured under RTI Act does not get transformed into a public document. In that event, that certified copy of the private document must satisfy the provisions of Evidence Act for secondary evidence.

37. Under Section 65 (f) of the Act, secondary evidence is permissible “when the original is a document of which a certified copy is permitted by the Evidence Act or by any other law in force in India,” to be given in evidence. Interpreting this provision, **Gurmukh Ram Madan** has held that secondary evidence is admissible despite the original being available, only if either the Act or any other law permits its certified copy to be produced. That means, if the document is not a public document, its certified copy gets no immunity; the party must let in evidence explaining the non-availability of the original.

38. A learned Single Judge of this Court in **Gulshan Sadruddin Vishram** has bemoaned the dilatory tactics the parties adopt in litigation. In that context, **Gulshan Sadruddin Vishram** observes that the procedure is only handmaid of the justice and not its mistress. The resistance in the matter of admission of documents or evidence must be on the touch stone of prejudice. “The approach cannot be that because some documents may prove to be inconvenient, every attempt should be made to resist its production. The litigation is not a game of Chess. Rather, litigation is an attempt to discover where the truth lies.” True, indeed.

In perspective:

39. To put the issue of marking documents in perspective, I hold that respondent, in fact, may raise objection about the admissibility of the documents. To that extent, their account cannot be found fault with. About the impugned order, I may note that in most instances the trial Court has accepted that PW1 is competent enough to have the

documents marked through him. On the other hand, it has however ruled that each document must be marked through the official who has issued it. This may assume importance or relevance *vis-à-vis* a private document which a party has secured through a public authority under RTI Act—say, a registered deed of sale, a deed of lease, or sub-lease.

40. In fact, this Court, in ***Vithoba Savlaram v. Shrihari Narayan***⁹, has held that once a private document has been kept in official record with entry about their execution, say by a registering authority, that document *per se* does not become a public document. But the entry in the official record in relation to that document does. That said, I will note that under Order 18 Rule 4 of CPC, certain documents need not be placed before the court as was contemplated either under Order 7 Rule 14 or under Order 8 Rule 1A of CPC, besides Order 13 Rule 1. Instead those could be produced for cross-examining a witness if the witness is its author or the originator, in the generic sense.

41. Here the alleged registered 'leave and license agreement' still remains a private document that its registration does not cure the mischief under Section 74 of the Act. Its marking through PW1 does not amount to its proof, though. I reckon the other documents are public documents or private documents sought to be marked through PW1, from whom they originate. At any rate, over the documents 1 and 2, the petitioner's gave up their contention.

Conclusion:

42. To conclude, I hold that the trial Court will allow petitioners to have the documents marked through PW1. If that done, it is always open for the respondents to question the relevance or the binding nature of those documents. About document no.2, it is open for the petitioners to mark them through the author or the competent person.

43. With these observations, I allow the writ petition by setting aside the impugned order 5th July 2018.

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signed by
Vina A.
Khadpe

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Vina A.
Khadpe

[DAMA SESHADRI NAIDU, J.]