

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1706/2013

Tukaram Kashinath Mandale	... Petitioner
V/s.	
Balkrishna & Balasaheb Sayajirao Thombare	... Respondent

WITH
WRIT PETITION NO.1091/2013

Chandrashekhar Shivajirao Pawar	... Petitioner
V/s.	
Kibs Bio Technology Ltd. & Anr.	... Respondent

WITH
WRIT PETITION NO.1705/2013

Sunanda Manikrao Thorat	... Petitioner
V/s.	
Balkrishna & Balasaheb Sayajirao Thombare	... Respondent

WITH
WRIT PETITION NO.1779/2013

Chandrashekhar Shivajirao Pawar	... Petitioner
V/s.	
Balkrishna & Balasaheb Sayajirao Thombare	... Respondent

Mr. Nitin Mule for the Petitioners
Mr. Sandip D. Shinde for the Respondents

CORAM: K.K. TATED, J.

DATED : JANUARY 8, 2019

P.C. :

1 Heard. In all these matters, the issue involved is; whether the order passed by the Trial Court rejecting the Petitioner's

Application to mark all the documents as exhibits u/s.80 of the Evidence Act, 1872 is correct.

2 It is to be noted that the Trial Court, considering the facts on record permitted the Petitioner to place on record a cheque return memo and marked exhibit. In respect of the remaining private documents, the court directed the Petitioner to take appropriate steps to prove those documents. Said observation was made by the Trial Court on the basis of the apex court judgment in the matter of ***Narbada Devi Gupta Vs. Birendra Kumar Jaiswal & Anr. (2003) 8 SCC 745***. Paragraph 16 and 17 thereof read thus:

“16. Reliance is heavily placed on behalf of the appellant on the case of Ramji Dayawala & Sons (P) Ltd., (supra), The legal position is not in dispute that mere production and marking of a document as exhibit by the court cannot be held to be a due proof of its contents. Its execution has to be proved by admissible evidence that is by the 'evidence of those persons who can vouchsafe for the truth of the facts in issue'. The situation is, however, different where the documents are produced, they are admitted by the opposite party, signatures on them are also admitted and they are marked thereafter as exhibits by the court. We find no force in the argument advanced on behalf of the appellant that as the mark of exhibits has been put on the back portions of the rent receipts near the place where the admitted signatures of the plaintiff appear, the rent receipts as a whole cannot be treated to have been exhibited as an admitted documents.

17. We have already reproduced above the contents of the order no. 53 dated 3.9.82 of the trial court. The appellant cannot be allowed to question the correctness of the said order. The documents were admitted and then exhibited. The plaintiff did not dispute his signatures on the back of

them. There was, therefore, no further burden of proof on the defendant to lead additional evidence in proof of the writing on the rent receipts and its due execution by the deceased landlady.”

3 The learned counsel for the Petitioner submits that the observations made by the Trial Court are contrary to the law as per section 80 of the Evidence Act. He submits that as per section 80 once the document is proved in any other court proceedings, those documents are required to be executed without taking further evidence and same can be read in evidence. Section 80 reads thus:

“80. Presumption as to documents produced as record of evidence.— Whenever any document is produced before any Court, purporting to be a record or memorandum of the evidence, or of any part of the evidence, given by a witness in a judicial proceeding or before any officer authorized by law to take such evidence, or to be a statement or confession by any prisoner or accused person, taken in accordance with law, and purporting to be signed by any Judge or Magistrate, or by any such officer as aforesaid, the Court shall presume—that the document is genuine; that any statements as to the circumstances under which it was taken, purporting to be made by the person signing it, are true, and that such evidence, statement or confession was duly taken.”

4 The learned counsel for the Petitioner submits that these facts are not considered by the Trial Court at the time of passing the impugned order dated 27.08.2012. Hence, the same is liable to be set aside.

5 It is to be noted that in the present proceedings, the Trial

Court has already taken on record a cheque return memo and marked exhibits and in respect of private documents, the court has specifically permitted the Petitioner to prove the contents thereof in view of the ratio laid down in the matter of ***Narbada Devi Gupta (supra)***. There is no dispute that those documents can be marked as exhibit, but cannot be read in evidence unless their contents are proved.

6 Considering these facts, I do not find any reason to interfere with the impugned order.

7 Hence, all the Writ Petitions stand rejected.

8 Liberty granted to the Petitioner, if they so desire, to prove those documents, according to law.

(K. K. TATED, J.)