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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12892 OF 2017

Tarachand C. Jain

...Petitioner.

V/s.

Shailendra J. Shukla

...Respondent.

Mr. S. N. Vaishnav a/w. Nupur J. Mukherjee i/b M/s. N.N. Vaishnawa and Co. for the Petitioner.

Mr. Y. U. Divekar a/w. Mr. Yash Kataria and Mr. Rohan Karpande i/b. M/s. Divekar and Co. for the Respondent.

CORAM : N.R. BORKAR, J.
DATE : 20.08.2021.

P.C. :

1. This petition takes an exception to the order passed by the trial court dated 13.6.2017 in Suit NO. 7367 of 2002.

2. The petitioner herein had filed the suit for recovery of an amount of Rs.8,79,540. After the petitioner closed his evidence, the respondent/defendant filed his affidavit-in-lieu of examination and along with said affidavit filed certain documents on record. The petitioner objected to exhibiting the said documents on the ground that there is no reference of document dated 3.5.2000 in written statement and they cannot be exhibited unless they are formally proved. The trial court rejected the objection of the petitioner and exhibited the documents by order impugned in the

present petition.

3. I have heard the learned counsel for the petitioner and the learned counsel for the respondent.

4. The learned counsel for the petitioner submits that the trial court ought not to have exhibited the documents of which there is no reference in written statement. It is submitted that the documents cannot be exhibited unless the author of the said documents is examined. It is accordingly, submitted that the order impugned needs to be quashed and set aside.

5. On the other hand, the learned counsel for the respondent submits that the evidence of the respondent is over and even the petitioner has led the evidence in rebuttal in respect of the documents in question. It is submitted that the petition, therefore, needs to be dismissed.

6. It is well settled that the evidence if any lead beyond pleadings is not to be considered. It is also well settled that mere marking of an exhibit to the documents does not dispense with

the proof of the documents. In view of this settled legal position, I am not inclined to interfere with the order impugned. The petitioner is at liberty to raise all legally permissible objections in relation to the documents in-question at the time of final hearing of the suit. Needless to mention that the trial court shall deal with the said objections appropriately in it's judgment.

7. Writ Petition stands disposed of, accordingly.

[N.R.BORKAR, J.]