

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.1620 OF 2013
MOHANLAL RAMKISHAN AGRAWAL AND OTHERS
..PETITIONERS
VERSUS
VISHNUDAS RAMKISHAN AGRAWAL AND OTHERS
..RESPONDENTS**

...

Mr. Satyajit S. Bora, Advocate for the Petitioners.
Mr. Anil S. Bajaj, Advocate for Respondent No.1.

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**CORAM : S. V. GANGAPURWALA, J.
DATED : 14th JANUARY, 2022.**

PER COURT:-

1. The present respondents filed Suit for dissolution of partnership and other reliefs. The Suit was partly decreed. The petitioners/original defendant nos.1, 3 and 4 filed Appeal bearing Regular Civil Appeal No.111/2007. During the pendency of the Appeal, petitioners filed application Exhibit-48 for exhibiting the documents which were produced before the Trial Court alongwith Exhibit-227. The application filed by petitioners Exhibit-48 is rejected by the District Judge. Aggrieved thereby, the present petition.

2. Mr. Bora, learned counsel for petitioners submits that, documents for which an application was given by petitioners Exhibit-48 for exhibiting the documents are the documents produced by the plaintiffs. The said documents are original. The said documents are confronted to the witnesses. In view of that, there was no impediment to exhibit the documents.

3. Mr. Bajaj, learned counsel for original plaintiffs submits that, the documents placed on record are not the originals. They are not primary piece of documents. Though, plaintiffs have produced the said documents those documents are not confronted to the witnesses. Only the advocate has referred it. In view of that, no error has been committed by the District Court in rejecting the application. The learned counsel relies on the judgment of the Apex Court in case of **Ishwar Dass Jain (Dead) through Lrs. Vs. Sohan Lal (Dead) by Lrs.** reported in (2000) 1 SCC 434 to contend that, the extract of account books are not admissible and they are to be proved to the extent that they have been maintained in regular course of business.

4. This is a case where the documents produced by plaintiffs are sought to be exhibited by defendants and plaintiffs are opposing it. All these documents which petitioners want to be exhibited by filing application Exhibit-48 are the documents produced by the plaintiffs. The defendants it appears has prayed for exhibiting the documents meaning thereby, that the petitioners herein are not contesting the genuineness of the said documents.

5. Mere exhibiting the documents also does not mean that the documents are proved.

6. In view of the aforesaid, as the plaintiffs have produced the documents and the defendants are requesting the Court to exhibit it, the plaintiffs certainly cannot object to those documents being exhibited, as the plaintiff is the one who has produced those documents.

7. The Apex Court judgment in a case of **Ishwar Dass Jain (Dead) through Lrs. Vs. Sohan Lal (Dead) by Lrs.** (supra) was dealing with the provisions of Section 34 of the Evidence Act read with Section 4 of the Banker's Book Evidence Act and Section 65 of the Evidence Act.

8. In the present matter as observed it is plaintiffs who had produced those documents. The defendants have prayed for exhibiting it.

9. Evidential and probative value of the documents is to be considered by the Court while deciding the Appeal.

10. In light of the above, the impugned order is quashed and set aside and the application Exhibit-48 requesting the Court to exhibit the documents filed Exhibit-221 by plaintiffs in the Civil Suit between the parties is allowed.

11. Writ Petition is disposed of. No costs.

(S. V. GANGAPURWALA)
JUDGE