

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO. 856 OF 2021

1. Ashwini w/o Rajesh Hadhav age : 26 years, Occ. : Household, Currently Residing at : Ambedkar Nagar, Behind Post Office, Mehkar, Tq. Mehkar, Dist. Buldhana.
2. Rajnandini Rajesh Jadhav, Age : 8 years, Occu : Nil, Daughter of Mrs. Ashwini Jadhav and Rajesh Jadhav, Minor through its Guardian, Ashwini w/o Rajesh Jadhav, Age : 26 years, Occu : Household, R/o Ambedkar Nagar, Behind Post Office, Mehkar, Tq. Mehkar, Dist. Buldhana

... PETITIONERS

VERSUS

1. Rajesh s/o Arjun Jadhav, Age : 50 years, Occu : Junior Engineer, Official Address : Deputy Engineer, P.W.D. Office, Kandhar, Tq. Kandhar, Dist. Nanded. Residential Address : Rajvila Building, Ekta Nagar, Near Post Office, Opposite Nirmiti Apartment, Tq. And District Buldhana – 443 001 Cell No. 942372202159
2. Vachala w/o Arjun Jadhav, Age : 75

years, occu: Household, Residing at :
Rajvila Building, Ekta Nagar, Near Post
Office, Opposite Nirmiti Apartment,
Tq. And District Buldhana – 443001
Cell No.8625876606

3. Sandhya Kiran Navgire, Age : 57 years,
Occu : Household, Residing at : Pratik
Niwas, Plot No. 68, Near Prashant
Hotel, Chatrapati Shivaji Nagar, Beed –
Bypass Road, Satara Parisar,
Aurangabad – 431005 Cell
No.942021305134
4. Kiran Sonajirao Navgire, Age : 62
years, Occu : Retired Officer, Residing
at : Pratik Niwas, Plot No. 68, Near
Prashant Hotel, Chatrapati Shivaji
Nagar, Beed – Bypass Road, Satara
Parisar, Aurangabad – 431005 Cell
No.9420242458
5. Pratik Kiran Navgire, Age : 22 years,
Occu : Engineer, Residing at : Pratik
Niwas, Plot No. 68, Near Prashant
Hotel, Chatrapati Shivaji Nagar, Beed –
Bypass Road, Satara Parisar,
Aurangabad – 431005 Cell
No.9427979701

... **RESPONDENTS.**

Shri Ajaykumar Waghmare, Advocate a/w Shri Mahesh Rai,
Advocate for the petitioners.

Shri S.M. Awachar, Advocate for respondent nos. 1 to 5.

CORAM : VINAY JOSHI, J.
DATED. : 06.07.2022.

ORAL JUDGMENT :

RULE. Rule is made returnable forthwith.

2. Heard finally by consent of both the parties.

3. The challenge in this petition is to the order dated 23.11.2021 passed by the Trial Court on Exhibit 298 by which the petitioners' application seeking to strike out certain portion of evidence, came to be rejected. The controversy is very short. The petitioner no.1-wife has moved to the Magistrate claiming multiple reliefs as available under the provisions of the Protection of Women from Domestic Violence Act, 2005 (for short 'the D.V. Act'). The petitioner no.1-wife has completed her evidence on which the respondent no.1-husband has filed his evidence affidavit. The learned Magistrate has recorded the respondents' evidence at Exhibit 272 as regards to the proof of documents. The dispute is about paragraphs 1 and 2 of the respondents' evidence wherein the learned Magistrate on consent of the petitioners' Advocate, has exhibited certain documents. Petitioner no.1-wife has filed an application at Exhibit 298 for striking out paragraphs

1 and 2 of the evidence by stating that her Advocate has only consented for exhibition of documents, but not admitted the documents. The learned Magistrate has rejected the said contention, therefore, the matter is before this Court.

4. It reveals that there are two set of endorsements regarding exhibition of documents. In first paragraph, the Trial Court has endorsed that the wife's learned Counsel has admitted certain documents and also gave no objection to exhibit the same and thus, the Magistrate with said endorsement marked those documents as Exhibit 277 to 281. Since the endorsement is specific that the wife's learned Counsel admitted those documents, no interference is called as regards to paragraph 1 of the evidence of respondent no.1-husband.

5. As regards to second endorsement of paragraph 2 is concerned, I do found substance in the contention, because, the endorsement made by the Magistrate itself discloses that the wife's learned Counsel has only given his no objection to exhibit the documents and nothing else. In the circumstance, the remark of the learned Magistrate that there is no necessity to prove the documents is unwarranted. The documents Exhibit 282 to 295 though marked, it is

only because no objection is given for exhibition of those documents. Always exhibition of documents and proof of documents are two different aspects. Since there was no objection for exhibition, it means that the Court can read those documents in the evidence. It is for the party adducing the evidence to prove the contents thereof, if required under the Indian Evidence Act, 1872.

6. In view of that it is clarified that the documents at Exhibit 282 to 295 are merely exhibited as the other side gave no objection to the extent of exhibition of documents only. The remark of the Trial Court (in para 2) that there is no necessity to prove the documents is uncalled and therefore, it is set aside.

7. The petition stands disposed of in above terms.

(VINAY JOSHI, J.)

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