

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.3860 OF 2023

**ARYA UNIQUE PAINTS THROUGH PROPRIETOR ABHIJIT ANANT
KULKARNI
VERSUS
KAMALESHWAR AGENCIES THROUGH PROPRIETOR VIKAS ANKUSH
JOGDAND**

...
Advocate for Petitioner : Ms. Kirti A. Deshpande

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 19th APRIL, 2023

PER COURT :

1. Petitioner is aggrieved by the order dated 13/01/2023, passed by learned 4th Joint Civil Judge, Senior Division, Ahmednagar, below Exhibit-113 in Special Civil Suit No.167/2018, thereby rejecting application filed by the petitioner/ plaintiff for de-exhibiting the document.
2. Petitioner/plaintiff filed suit for recovery of amount of Rs.33,92,000/-. The suit is resisted by the defendant by filing his written statement. Thereafter evidence of the plaintiff was recorded. According to learned advocate for petitioner, plaintiff's evidence is partly recorded. Thereafter defendant filed evidence affidavit. His further examination-in-chief was recorded, at that time, agreement dated 16/02/2016 executed between the plaintiff and defendant was given Exhibit No.110. Learned advocate for plaintiff objected for exhibiting said document on the ground that

the said agreement is not referred in written statement or in evidence affidavit of the defendant. Trial Court rejected the objection holding that once the document is exhibited the same cannot be de-exhibited.

3. Thereafter the plaintiff filed application Exhibit-113 contending that document at Exhibit-110 is irrelevant and it may be de-exhibited, by revoking the order passed by the trial Court earlier. This application is rejected by the trial Court. Hence, the present petition.

4. Heard learned advocate for petitioner. Perused the memo of writ petition, annexures thereto and the impugned order.

5. It is settled position of law that merely because document is exhibited it cannot be said to be proved on record and it's admissibility and relevancy can be decided by the trial Court at the time of hearing of suit, and document once exhibited cannot be de-exhibited.

6. Petitioner/plaintiff is entitled to challenge relevancy, admissibility and proof of agreement at Exhibit-110 at the time of hearing of the suit.

7. There is no merit in the challenge raised by the petitioner in present petition. Trial Court has passed well reasoned

order which need not be interfered in exercise of extraordinary writ jurisdiction. Writ petition is, therefore, dismissed with liberty to the petitioner to question admissibility, relevancy and proof of agreement Exhibit-110 at the time of hearing of suit.

(NITIN B. SURYAWANSHI, J.)