

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

WRIT PETITION NO.9220 OF 2022

**SHRI AKHILESH KAILASHCHAND GOYEL
VERSUS
SHRI. BHIKAMCHAND BHAWARLAL JOSHI**

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Advocate for Petitioner : Mr. S.P. Brahme
Advocate for Respondent : Mr. Amit S. Savale

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 21st MARCH, 2023

ORDER :

1. By this petition, order dated 18/02/2022, passed by learned Civil Judge, Senior Division, Shahada, below Exhibit-23 in Special Civil Suit No.7/2018, is challenged by the petitioner /original plaintiff.

2. Petitioner/plaintiff has filed suit for recovery of Rs.25,98,980.56/- claiming that the said amount was paid as advance to the defendant for supply of cotton bales. Suit is resisted by the defendant/respondent by filing written statement. Plaintiff then filed affidavit-in-lieu of examination-in-chief. During his cross-examination, the defendant referred photocopies of five bills. Learned advocate for plaintiff objected for referring said bills during cross-examination on the ground

that the said documents were not filed at appropriate stage and there is no explanation given for belatedly filing the same. Trial Court has rejected the said objection and has permitted defendant to confront said photocopies to the plaintiff and marked them as 'Article'. Plaintiff is aggrieved as his objection is turned down.

3. Heard learned advocate for petitioner and learned advocate for respondent. Perused the grounds raised in the writ petition, documents annexed thereto and the impugned order.

4. Admittedly, the documents referred in cross-examination of the plaintiff were referred in the written statement. Plaintiff has admitted in the cross-examination that as per the photocopies of bills referred to him in cross-examination the defendant had supplied them cotton.

5. Party taking cross-examination of witness is entitled to refer document which is relevant to the fact in issue. It is settled legal position that if a document is referred to witness during cross-examination, the same is required to be marked as 'Exhibit'. In the present case, it appears that since photocopies of bills were referred, the trial Court has rightly given them Article numbers.

6. There is no merit in the objection raised by the plaintiff that documents cannot be confronted to the plaintiff for the first time during cross-examination. The trial Court is justified in rejecting said objection.

7. Plaintiff is at liberty to challenge admissibility, relevancy and probative value of these documents at the time of final hearing of the suit.

8. Trial Court has properly considered objection raised by the plaintiff and has rightly turned down the same, which is in consonance with the settled legal position.

9. There is no illegality or perversity in the order impugned in present petition. No case is made out by the petitioner to warrant exercise of extraordinary writ jurisdiction. Writ petition being devoid of merit is dismissed.

NITIN B. SURYAWANSHI, J.