

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11113 OF 2023

Babanbai W/o Devidas Bharsakhle
and others Petitioners

Versus

Jijabai W/o Raghunath Divekar
and others Respondents

Mr. Namit S. Muthiyan, Advocate for the Petitioners
Mr. Shaikh Farukh V. Patel, Advocate for Respondent Nos.1 to 4

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 09th OCTOBER, 2023

ORDER :

1. Petitioners are aggrieved by the order passed below Exhibit-160 in Regular Civil Suit No.2064 of 2012 by learned 15th Joint Civil Judge, Junior Division, Aurangabad.

2. By the said application, plaintiffs prayed for exhibiting documents filed at Exhibit-159, list. Plaintiffs claimed that those documents are public documents, those are referred in the plaint and also referred in examination-in-chief of plaintiffs' witness, hence these documents to be exhibited. Defendant Nos. 2 to 10 have given no objection to exhibit the said documents. Defendant No.14 objected on the ground that while giving evidence affidavit, plaintiffs have failed to produce

those documents, and since documents are not confronted to the witness, plaintiffs cannot insist to exhibit these documents.

Petitioners/defendants objected the application on the ground that these documents are not mentioned in the plaint, and there can be no evidence beyond pleadings, they are also not referred in the evidence affidavit of plaintiff. Except *Khasra Patrak* and 7/12 extract, other documents are not public documents. After hearing the parties, Trial Court has partly allowed the application, and directed to give exhibit numbers to the documents at Exhibit-159/1 to 14 on the ground that those are certified copies. Other documents were directed to be proved on record in accordance with law.

3. Heard learned advocate for petitioners and learned advocate for respondents. Perused the writ petition memo, annexures thereto, and impugned order.

4. Petitioners have challenged this order by relying on *Laxmikant Sinai Lotlekar and Ors. Vs. Raghuvir Sinai Lotlekar, 1984*, contending that this is not a stage when the documents can be produced and exhibited. According to petitioners, if these documents are exhibited at this stage, then supporting defendants will be given opportunity to cross-examine and

they will fill up lacuna in the evidence of plaintiffs. They would wash out the admissions secured by the present defendants in the cross-examination of plaintiffs.

5. Learned advocate for respondents, on the other hand, supported the impugned order.

6. Merely because the documents are exhibited, it cannot be said that they are admitted in evidence. Their relevancy, admissibility and proof is subject to final adjudication by the Trial Court. In that view of the matter, this Court is not inclined to interfere in the order impugned in the present petition. Writ Petition is devoid of merit is dismissed.

7. The only indulgence that can be shown to the petitioner is that, supporting defendants shall conduct cross-examination of plaintiffs' witness, before petitioners/defendant Nos.3 to 6 cross-examine plaintiffs' witness.

[NITIN B. SURYAWANSHI]
JUDGE

S.P. Rane