

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

WRIT PETITION NO. 13916 OF 2023

**MOHD FAIYAZ CHAUHAN MOHD IMANUDDIN CHAUHAN
VERSUS
WASEEM QURESHI ISMAIL QURESHI**

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Advocate for Petitioner : Mr. Muthiyan Namit Sunil

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CORAM : SHAILESH P. BRAHME, J.

DATE : 4th NOVEMBER 2023

PER COURT :

Heard.

1. The petitioner is aggrieved by the order dated 04.09.2023 passed below Exhibit-45 in Special Civil Suit No.71/2018. When the respondent/plaintiff was being cross-examined by the petitioner/defendant, application at Exhibit-45 was submitted to admit and exhibit a photocopy of document purported to be agreement dated 17.11.2012. It was rejected.

2. The learned Counsel for the petitioner submits that the transaction and the agreement dated 17.11.2012 have already been admitted and referred to in the cross-examination. He has pointed out that the deposition of the plaintiff from page nos.58, 59, 60 and 62 of the compilation which referred the document dated 17.11.2012 executed by Pandurang Avala. He submits that in view of this, when the document in question was confronted to the witness, it should have

been admitted and exhibited. He further submits that atleast the document should have been endorsed for the purpose of identification. The identification of a document is distinct from the proof. The probative value of the document could have been tested during the course of trial. The petitioner is likely to suffer hardship if the actual document which is identified is either tampered or in any way misplaced.

3. The learned Counsel submits that the learned Judge has committed error of jurisdiction in rejecting application. The selfsame document is already part of the Special Civil Suit No.195/2014 which is for specific performance of contract. When the respondent is aware of the document and has not raised any objection for confronting a photocopy, the learned Judge is not justified in rejecting application. The reliance is also placed on judgment rendered by the Delhi High Court in the matter of Anil Madan Vs. R. K. Madan and Ors. He has referred to paragraph no.19 and 20 of the said judgment.

4. Already the document is produced on record in proceeding of Special Civil Suit NO.195/2014. The petitioner has every opportunity to prove the agreement dated 17.11.2012. The learned Judge has rightly held that the document being photocopy cannot be admitted or exhibited for any purpose.

5. The document in question is confronted to the party during the cross-examination. Confronting a document to a witness is for various

purposes. If the petitioner wishes to lead evidence, then he will have opportunity to prove that document. I am of the considered view that no prejudice is caused to the petitioner due to impugned order.

6. The judgment cited by the learned Counsel may not apply to case in hand. In that case, a photocopy of a complaint which is addressed to one of the parties was to be exhibited. The defendant in that case has admitted document in question. As the facts are different, I am of the opinion that the judgment cited is not applicable.

7. In view of the above, I find that there is no merit in the petition. Thus the petition is dismissed. However, this order will not preclude the parties to the litigation to lead evidence of the document in question as permissible in law.

[SHAILESH P. BRAHME, J.]

Najeeb.