

SA Pathan

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.10159 OF 2023

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Baburay Pundalik Salunke ... Petitioner

V/s.

Lok Housing & Construction Ltd & Ors. ... Respondents

Ms. Swati, for the Petitioner.

Mr. Kalpesh Joshi a/w Ms Nisha Shah i/by Kalpesh
Joshi Associates, for Respondent Nos.2 & 3.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 7, 2023

P.C.:

1. The challenge in this writ petition is to the order dated 4 August 2023 passed below Exhibit 50 and order dated 7 August 2023 in Chamber Summons No.1364 of 2023.

2. By application below Exhibit 50, the petitioner requested the Court to mark agreement to sale deed dated 25 October 2002 as exhibit. The said application came to be rejected.

3. In so far as such issue is concerned, the Full Bench of this Court in the case of **Hemendra Rasiklal Ghia vs Subodh Mody** reported in 2008 (5) CTC 577, held that where the objection does not dispute the admissibility of the document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient. Such objection needs to be decided by the Trial Court at the time of final hearing of the suit, but before

delivery of the judgment.

4. In view of the ratio laid down by the Full Bench of this Court, the Trial Court shall decide at the time of hearing as to whether the agreement to sale deed dated 25 October 2002 can be marked as exhibit or not.

5. In so far as, the second application to add interim Resolution Professional to represent defendant No.1-company is concerned, it is not in dispute that the National Company Law Tribunal (for short 'NCLT') has appointed Interim Resolution Professional to carry out statutory function in relation to defendant No.1. Therefore, such interim Resolution Professional needs to represent defendant No.1-company in the suit. Hence, the petitioner is, therefore, permitted to substitute Interim Resolution Professional as a person to represent defendant No.1.

6. Necessary amendment to be carried out in the plaint.

7. The writ petition stands disposed of. No costs.

(AMIT BORKAR, J.)