

Anand

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

WRIT PETITION NO. 11501 OF 2016

Shivdas Nimba Thankar

.Petitioner

**ANAND
SUDHAKAR
SUDAME**

Vs.

M/s. Lalit Constructions & ors.

.Respondents

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by ANAND
SUDHAKAR
SUDAME

Date: 2023.08.04
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Mr. Rahul D. Motkari, Advocate, for the Petitioner

Mr. R. D. Soni a/w Mr. Tushar K. Momaiyah i/b. M/s. Ram & Co.,
Advocate, for Respondent Nos. 1 & 2

Mr. Shriram S. Kulkarni, Advocate, for Respondent No. 3

Mr. Swapnil S. Mhatre, Advocate, for Respondent No. 4

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 26.07.2023

P. C.

. The challenge in the Petition is to the order dated 12.08.2016 rejecting the Petitioner's application to Exhibit the Deed of cancellation dated 21.11.2006. The application was preferred for the reason that during the cross-examination of Defendant No. 2, questions were put on the said document. The said application has been rejected on the ground that the said document has not been referred to or shown to Defendant No. 2 and it is not the case that witness of Defendant No. 2 has admitted the contents of the document. The trial Court has held that as the document has not been duly proved, the application is devoid of merits.

2. Heard learned counsel appearing for the Petitioner and learned counsel appearing for the Respondent.

3. Learned counsel appearing for the Petitioner has invited attention of this Court to the cross-examination of witness of Defendant No. 2. In the cross-examination which was conducted by Defendant No. 1, specific questions were put as regards Visar Pavati dated 18.07.2006 and as regards Deed of Cancellation of the Visar Pavati. He would further point out the specific question which is at page No. 99 of the Petition in which questions are put as regards the Deed of Cancellation of Visar Pavati. He would contend that as the witness has been questioned on the Deed of Cancellation of the Visar Pavati, it is necessary to exhibit the said document. In support of his submissions, he relies upon the decision of this Court in the case of ***Geeta Marine Services Pvt. Ltd. & anr. Vs. State & anr.***, reported in ***2009(3) Bom. CR. (Cri.) 633***.

4. *Per contra*, learned counsel appearing for the Respondents submits that considering the provisions of Section 145 of the Indian Evidence Act, if it is intended to contradict the

witness by the writing, attention must be drawn of the witness before the writing can be proved. As such, he would contend that in the present case, the document i. e. the Deed of Cancellation of Visar Pavati is not shown to the witness of Defendant No. 2 and merely questions are being put. He would further point out the affidavit of evidence of Defendant No. 2 and would submit that the document is merely being produced alongwith the list without the said document been proved and as such, in the absence of proof, the document cannot be marked as Exhibit.

5. Considered the submissions.

6. The factual position is that the evidence of Defendant No. 2 is not yet completed and during the cross-examination of the witness for Defendant No. 2, questions were put as regards the Deed of Cancellation of the Visar Pavati. As held by this Court in the case of *Geeta Marine Services Pvt. Ltd. (Supra)*, a consistent practice is followed in the Courts of Maharashtra that when a document is referred to during cross-examination of a witness, the said document is marked as an Exhibit and that the said practice is the practice of convenience only for the purpose of locating and identifying the document. In the present case,

upon perusal of the cross-examination, it appears that the questions were put to the witness for Defendant No. 2 as regards the Deed of Cancellation of the Visar Pavati. That being so, by applying the law laid down in the case of ***Geeta Marine Services Pvt. Ltd. (Supra)***, the document is required to be marked as an Exhibit. However, marking of the document as Exhibit by such a process does not dispense with the requirement of the proof of the execution, contents and genuineness of the document in accordance with the law of evidence. In the present case, the evidence of Defendant No. 2 is not yet over and as such, it is open for him to lead satisfactory evidence in accordance with the Evidence Act and prove the document in question. However, considering the fact that the questions were put during the cross-examination to the witness of Defendant No. 2 on the Deed of Cancellation of Visar Pavati, the document is required to be marked as Exhibit only for the purpose of identifying and locating the document and nothing further. It is for Defendant No. 2 to prove the said document in accordance with the provisions of law.

7. In the light of above, the impugned order dated 12.08.2016 is quashed & set aside. The Deed of Cancellation of

the Visar Pavati is to be marked as an Exhibit. merely for the purpose of identifying and locating the document. Marking of the said document as Exhibit does not dispense with the proof of the document and the responsibility is upon Defendant No. 2 to prove the same in accordance with law.

8. The Writ Petition stands allowed.

9. Considering that the suit is of the year 2009 and same is stayed by this Court in the year 2016 despite a very limited controversy is raised in the present Petition, in my opinion, it would be in the interest of justice to expedite the hearing of the suit. The learned Judge is directed to decide the same expeditiously and in any event, within a period of one year from today.

(SHARMILA U. DESHMUKH, J.)