

AGK

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

WRIT PETITION NO.12554 OF 2023

Rajeshkumar Changuprasad Sonar
& Anr.

... Petitioners

V/s.

Ibrahim Yusuf Shaikh & Anr.

... Respondents

Mr. Dinesh Bhosale for the petitioners.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 10, 2023

P.C.:

1. By the impugned order, the Trial Court rejected application filed by defendant Nos.1 and 2 to de-exhibit documents at serial Nos.1 to 20.

2. The respondents filed suit for specific performance of Memorandum of Understanding dated 4 June 2015. In the said suit, the Trial Court fixed stage of admission and denial of documents for filing say on the documents produced by the plaintiffs. Since 21 March 2022, the petitioners were given four opportunities to raise objection to the documents produced by the plaintiffs. On 17 September 2022, petitioners sought time to file say to the documents. Despite such opportunities, the petitioners failed to file say. Adjournment on 17 September 2022 was granted subject to payment of costs. The costs was also not paid. Hence, the Trial Court on 15 November 2022 proceeded to exhibit the

documents. Once the documents are exhibited, the defendants are precluded from raising objection in relation to insufficiency of stamp during said suit. Except such defense, the petitioners are entitled to raise all other contentions as regards inadmissibility of documents.

3. The Full Bench of this Court in **Hemendra Rasiklal Ghia v. Subodh Mody** reported in 2008 (5) CTC 577 has delineated three categories of proof: (i) documents which are insufficiently stamped and no objection is raised before exhibiting the document; (ii) the objection is in relation to mode of proof of documents; and (iii) objection regarding admissibility of documents.

4. In relation to the first category of documents, the party is precluded raising inadmissibility of documents once such document is exhibited. However, in second category the party needs to raise issue relating to mode of proof so that the Civil Court comes to the conclusion that the document is not proved by the party. Such party shall have opportunity to prove document during the trial. In relation to the third category, it is open for the party to raise such objection at any stage of the suit.

5. In the light of said judgment, in my opinion, it will be open for the petitioners to raise all objections as are available under clause (iii) of the judgment of the Full Bench.

6. With this clarification, the writ petition stands dismissed. No costs.

(AMIT BORKAR, J.)