



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Writ Petition No.8457 of 2022
VINOD S/O TUKARAM HULKE
VS
RAVI S/O. RAMCHANDRA AMBULKAR

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri N.R. Shishikar, Advocate for the Petitioner/s
Adv. H.D. Jawgade, h/f Shri S.S. Gangawane, Adv. For the respondent

CORAM : ANIL S. KILOR, J.
DATED : 12.10.2023

1. Heard.
2. The learned trial Court during the examination-in-chief of defendant/respondent in the suit for recovery of Rs.8 lakhs exhibited a document namely the copy of agreement as secondary evidence.
3. Admittedly, at the time of exhibiting the document, no objection was raised on any ground and the reason given by the learned trial Court to exhibit the document is that, despite the fact that the direction to the petitioner/plaintiff to produce the original copy of the agreement, he failed to produce the same and therefore, true copy of it was exhibited as Exh.50, under Section 65 of the Indian Evidence Act.
4. It is the case of the petitioner that without looking at the pre-requisites to consider any document as secondary

evidence as stated under Section 65 of the Indian Evidence Act, the document was exhibited. It is submitted that this document ought not to have exhibited as it does not comply with the requirements of Section 65 of the Indian Evidence Act.

5. The learned counsel for respondent, on the other hand, opposes the present writ petition and submits that since at the relevant time the objection was not raised, this Court may not interfere with the order exhibiting the said document.

6. In light of the rival contentions of the parties, I have perused the record and the impugned order.

7. It is apparent from record that the petitioner never raised any objection while exhibiting the document. The document was exhibited on 17.01.2022 and now the matter is fixed for defendant's evidence.

8. Considering the argument made by the learned counsel for the petitioner and the objection as regards the non-fulfillment of the requirements of Section 65 of the Indian Evidence Act, I am of the opinion that purpose would be sub-served, if the petitioner is permitted to raise such objection at the time of final argument, which the learned trial Court shall decide on merits. Accordingly, I pass the following order:

(i) The writ petition is disposed of with liberty to raise the objection to the document Exh.50 at the time of final argument.

(ii) If such objection is raised by the petitioner, the learned trial Court may consider it, in accordance with law.

[ANIL S. KILOR, J.]