

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

125

CR-4903 of 2023

Date of Decision:25.08.2023

Harkirat Singh

....Petitioner(s)

Versus

Jaspreet Singh

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Shehbaz Thind, Advocate,
for the petitioner.

SANJAY VASHISTH, J. (Oral)

1. The present petition has been filed by the petitioner (defendant) Harkirat Singh challenging the order dated 11.07.2023 whereby the application filed by the petitioner (defendant) for de-exhibiting the agreement to sell has been dismissed. The relevant part of the impugned order says as under:-

“5. After hearing both the counsels and going through the application, it can be deduced that applicant has sought relief of De-exhibiting the agreement to sell dated 10.07.2012 on the grund that it is conveyance and same has been executed on stamp papers of Rs.2000/-. It is contended that possession has been delivered on the basis of said agreement in question and on that ground the said agreement to sell is conveyance under the Stamp Act and stamp duty has to be affixed as per Schedule (1A) entry 23 of Stamp Act. On the other hand, it is contended on the part of plaintiff that agreement to sell is properly stamped and provision of Schedule 1(A) entry 23 of Stamp Act is not applicable to the facts of the case. In view of agreements and counter-agreements, the important question which has arisen before the court is that if the documents which are

*exhibited can be de-exhibited/de-marked. However, before reaching at any conclusion, here it is pertinent to mention the law laid down in **Sudhir Engineering Company v. Nitco Roadways, 1995 RLR 286**. In this landmark judgment Justice R.C. Lahoti laid the entire law relating to the marking of the exhibits and tendering documents in evidence. The Bench has held that mere marking of the document does not dispense with the formal proof of the document. Any document filed by either party passes through three stages before it is held proved or disproved. **First stage:** When documents are filed by either party in the court, at that time document is on judicial file but does not become part of the judicial record. **Second stage:** When documents are tendered or produced in evidence by a party and the court admits it in evidence. It is the time when document is exhibited. A document admitted in evidence does become part of the judicial record. **Third stage:** It is a stage when documents are held proved, not proved or disproved as per Section 3 of Evidence Act. This stage comes when court applies its judicial mind at the time of appreciation of evidence.*

By application of law to the facts, the court would like to mention that admission of document should not be confused with proof of document. The marking of document as an exhibit/mark is only for the purpose of identification. It has no relation with its proof. Document cannot be merely held proved because it has been marked as an exhibit. Exhibit/mark means that document is available for consideration of the court. Besides, the question whether agreement to sell in question has become conveyance deed or not whether there is part performance of contract is to be adjudged on merits. At this stage, court do not find any merit in the application of the defendant and same stands dismissed. However, this order of mien shall have no bearing on the merits of the case. Now, to come up on 18.07.2023 for evidence of the plaintiff.”

2. Moreover before reaching to the stage of applying mind of Court as defined in judgment of the Hon'ble Apex Court in ***Sudhir Engineering Company's*** case (supra), there is no stage by which it could be declared that the document, which is marked or exhibited is surely admissible evidence or as a proved evidence. Otherwise also, this Court is of the view that before reaching to the third stage, concerned document is either marked or exhibited in the manner it is produced/brought on record and for the purpose of its reference only.

3. As the learned trial court has itself followed the spirit of the judgment passed by the Hon'ble Apex Court, I do not find any illegality in the order challenged before this Court and therefore, same is affirmed and revision petition stands dismissed.

(SANJAY VASHISTH)
JUDGE

August 25, 2023
dinesh

Whether speaking	:	Yes/No
Whether reportable	:	Yes/No