



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

942 WRIT PETITION NO. 14172 OF 2023

Dadasaheb Baburao Mashke

....Petitioner

VERSUS

Machindra Baburao Mashke

.....Respondent

.....

Mr.B. A. Dhengle, Advocate for the Petitioner.

Mr. S. B. Choudhari, Advocate for Respondent.

CORAM : R. M. JOSHI, J.

DATE : 3rd JULY, 2024.

PER COURT :

1. This Petition takes exception to order dated 25.01.2023 passed in Regular Civil Suit No.439/2017 below Exhibit 33 whereby the Petitioner/original Defendant had sought de-exhibition of document i.e. Isar Pavati which is marked as Exhibit 28.

2. It is the contention of learned counsel for the Petitioner that the learned Trial Court has exhibited the document in absence of Defendant and his lawyer. Thus, without giving sufficient opportunity, exhibition of document has been done.

3. This contention is opposed by learned counsel for Respondent by submitting that evidence is recorded in open Court, witness was examined, witness was shown the document, he identified his signature and he also stated that the document is executed in his presence. It is only thereafter the document was exhibited. Thus, it is his contention that there is no reason to cause interference in the order.

4. This Court does not accept the statement made by learned counsel for Petitioner that only for reason of absence of Defendant and his counsel at the time of exhibiting of the document, it becomes a ground to set aside the order. Learned Trial Court was within its powers to proceed to record evidence even in case other side remains absent. Apart from this, perusal of the order particularly paragraph no. 12 of the order indicates that before exhibiting the document said document was referred to the witness, he identified his signature and also made specific statement of the same being executed in his favour. Thus, this evidence was sufficient for the Trial Court to mark exhibit to said document.

5. Learned counsel for Petitioner has relied upon judgment of this Court in case of Rekha w/o Ramrao Bhujang vs. Subhadrabai w/o Keshavrao Bunage, **2012(3)Mh.L.J. 249**, to contend that the Court is required to decide admissibility of the document before exhibiting it.

6. Perusal of the judgment indicates that in that case specific objection was raised with regard to exhibiting of the document and the Trial Court, without deciding said objection, exhibited the document. As far as present case is concerned, admittedly, no objection was raised before the Trial Court at relevant time of exhibiting of the said document. As observed hereinabove, no fault can be found with such exercise being done by the Trial Court, thus there is no question of directing de-exhibition thereof.

7. This Court is informed that the witness is yet to be cross-examined. Hence, it is always open for the Petitioner to raise appropriate objection with regard to said document and its admissibility in evidence. In the circumstances, ends of justice can be met, by keeping issue of admissibility of document open for agitation at appropriate stage before Trial Court.

8. With this clarification, Petition is dismissed.

(R. M. JOSHI)
Judge

dyb