



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 13598 OF 2019

Dashrath Ganpati Nanaware And Others

VERSUS

Abdul Hamid Alias Babamiya Shaikh Mohmad Through Lrs
Naseem Begum Mohd Nazemuddin And Others

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Mr. H. V. Tungar, Advocate for the Petitioners

Mr. M. K. Deshpande, Advocate for Respondents

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CORAM : R.M. JOSHI, J

DATE : JULY 01, 2024

PER COURT :

1. By consent of both sides, heard finally at admission stage.

2. Petitioners are original Plaintiffs in RCS No. 323/2005. Respondents/Defendants not only filed written statement but also raised counter claim.

3. The stage of the proceeding is for recording of evidence. During the course of the recording of examination-in-chief of witness of Defendant, an issue arose for consideration before the Trial Court as to whether the document in the name and style "नौकर नामा" is proved in accordance with law and that whether that document requires compulsory registration. Learned

Trial Court exhibits the said document. An application was filed by Plaintiff for its de-exhibition, which came to be rejected by impugned order.

4. Learned Counsel for the Petitioners submits that not only the order of rejection of application Exh.124 for de-exhibiting the document deserves interference but also the observations made in paragraph 6 of the order require to be quashed and held not binding on the parties as the Trial Court is required to decide the said issue at this stage.

5. Learned Counsel for the Respondents/defendants opposed the said contention by pointing out that Trial Court has made it clear that mere marking documents or giving exhibit does not mean that same is approved as the exhibiting of document is an administrative work.

6. No fault can be found with the observation made by the learned Trial Court in the impugned order to the effect that mere marking of the documents or giving exhibit number to the document does not mean to say that the document is proved in evidence. Consequently refusal of Trial Court to de-exhibit

document cannot call for interference.

7. However, at the same time specific observations made in paragraph 6 which indicates that the Court has come to the conclusion that such document is not required registration cannot be ignored. This Court finds substance in the contention of learned Counsel for the Petitioner that the said issue ought not to have been decided unless both sides are heard at appropriate stage. He, therefore, submits that said issue be kept open for determination by Trial Court.

8. Having regard to the aforestated facts, though impugned order is not interfered with, however, it is clarified that the observations made in paragraph 6 are held to be *prima facie* observations, not binding on parties. It would be open for the parties to make out their respective case in that regard and Trial Court to decide the issue at appropriate stage.

9. Petition stands disposed of in above terms.

(R. M. JOSHI, J.)

Malani