

Ajay

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

**WRIT PETITION NO. 1451 OF 2020**

Tukaram Barku Mhatre

.. Petitioner

**Versus**

Vasudev Vitthal Bhoir

.. Respondent

- .....
- Mr. Prashant Rajput, Advocate for Petitioner.
- .....

**CORAM : MILIND N. JADHAV, J.**

**DATE : JANUARY 09, 2024.**

**P.C.:**

- 1.** Heard Mr. Rajput, learned Advocate for Petitioner.
- 2.** This Writ Petition takes exception to the order dated 01.07.2019 passed below Exhibit “49” in Special Civil Suit No.11 of 2013 pending before the Trial Court. During the course of trial, Application below Exhibit “49” is filed by the Plaintiff before the Trial Court.
- 3.** Application was filed for marking of 13 documents in evidence. The said documents were nomenclatured in the compilation of documents below Exhibit i.e. “50” from Exhibit i.e. “50/1” to Exhibit “50/13”. It is seen that the learned Trial Court has marked the documents from Exhibit “50/6” to Exhibit “50/13” in evidence as exhibits and rejected marking of the first five documents below Exhibit “50”.

**4.** Mr. Rajput who is the Plaintiff before the learned Trial Court would submit that the first five documents namely Exhibit “50/1” to Exhibit “50/5 are the most critical and crucial documents exhibiting execution of the suit transaction between the parties and the consideration which was exchanged between the parties. In that regard, he has immediately drawn my attention to the Suit plaint which is at page No.30 of the Writ Petition and more specifically to paragraph No.3 thereof which gives the details of the amounts which were infact exchanged between the parties as replicated in the document below Exhibit “50/1” which is the set of 26 vouchers. He would submit that in that view of the matter, the vouchers below Exhibit “50/1” ought to have been marked as exhibits. Considering that all 26 vouchers are the original vouchers. He would submit that the reason given by the learned Trial Court for non-marking of the said vouchers as exhibits is innocuous merely because the description of the suit property i.e. survey number concerned with the Suit property has not been written fully. *Prima facie*, he admits that suit property is Survey No.131/1 but inadvertently all vouchers have noted and mentioned it as Survey No.133 only.

**5.** He would submit that what is pertinent to be noted by the Court is the fact that the monies exchanged between the parties pertained to the transactions as stated in the suit plaint as also the names appearing on each of the vouchers are that of the parties to the

suit. I am inclined to accept the submissions made by Mr. Rajput that the said vouchers, *inter alia*, are clearly supported by the averments made in the suit plaint and pertain to monies exchanged between the parties. In that view of the matter, the reasons accorded by the learned Trial Court for non-marking them as exhibits stands quashed and set aside with a direction that all the original 26 vouchers below Exhibit “50/1” be marked in evidence as Exhibit No. “59/1” to “59/26”.

**6.** Next he would submit that the second document in the list is a Bank Statement of the Union Bank of India. This has been disregarded by the learned Trial Court in the absence of certificate under Section 65B of the Indian Evidence Act, 1872. However, Mr. Rajput would submit that Section 65B certificate has not been filed in respect of the said document i.e. Bank Statement. He undertakes to file the said certificate in accordance with law and if the same is filed, the same shall be considered and the document shall be marked as Exhibits in accordance with law.

**7.** Next 3 documents have been filed below Exhibit “50/3” to 50/5” and are all original documents and in that view of the matter, there cannot be any impediment in marking these documents as exhibits. Once again, the reason accorded by the learned Trial Court is completely innocuous and inconsistent with the statutory provisions of

law.

**8.** All that the learned Trial Court states in paragraph No.2 of the impugned order is that it admits these are original documents but goes on to state that they will have to be proved by the witness only. Once these documents find mention in the suit plaint and Mr. Rajput has drawn my attention to the averments made in paragraph No.4 of the plaint, the 3 original documents which will have to be exhibited in evidence. In that view of the matter, the documents exhibited below Exhibit “50/3” to Exhibit “50/5” are directed to be marked by the learned Trial Court as Exhibit Nos. “60” to Exhibit “62”.

**9.** The reason given by the learned Trial Court for non exhibiting the aforesaid 3 original documents is quashed and set aside.

**10.** In view of the above observations and findings, the impugned order dated 01.07.2019 is quashed and set aside and the learned Trial Court is directed to follow the aforementioned directions and proceed with the trial of the Suit in accordance with law.

**11.** In view of the fact that the Suit has been on the record and file of the learned Trial Court for the past 10 years, the learned Trial Court is requested by this Court to dispose of the Suit proceedings within a period of 18 months from today.

**12.** With the above directions, Writ Petition is disposed.

**[ MILIND N. JADHAV, J. ]**

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