

Wadhwa

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11832 OF 2023

Balu India & Anr	...Petitioners
<i>Versus</i>	
Western India Forgings Pvt Ltd	...Respondent

Mr Drupad Patil, *with Kunal Naik, i/b Nankani & Associates, for the Petitioner.*

Mr Rakesh Umarnani, *with Harish M Kumbhar & Siddhi P Nadgir, for the Respondent.*

CORAM Kamal Khata, J.
DATED: 10th April 2024

PC:-

1. Heard Counsel at some length.

2. The Respondent's Advocate consents to the trial court deciding objections at page 215 Exhibit 28 before the cross examination and consequently to set aside the observation in paragraph 35 at page 227 and 228. This is where the alleged document is exhibited and stated to be subject to the objection and its decision.

3. The law is well settled in *Hemendra Rasiklal Ghia vs Subodh Mody*¹. It is amply clear that the trial Court is obliged to decide the objections as it arises. It would be appropriate to extract the relevant paragraph here for ready reference to clarify the above reason:

“81. If the objection to the proof of document is not decided and the document is taken on record giving tentative exhibit, then the right of the cross-examiner is seriously prejudiced. Once the document is used in cross-examination, then the document gets proved and can be read in evidence as held by the Supreme Court in the case of *Ram Janki Devi v. Juggilal Kamlapat*, 1971 (1) SCC 477. If the cross-examiner decides not to cross-examine based on unexhibited document and, ultimately, at the fag end of the trial, the document is held to be admissible and proved, then, the cross-examiner as a rule of fair play would be entitled to further opportunity to cross-examine based on that document resulting in delayed trial defeating the very object and purpose of the amendment to the Civil Procedure Code.

83. Thus, we hold and rule that ordinarily an objection to the admissibility of the document in first and second categories of cases (excluding third type of case) has to be taken before the document is exhibited which, necessarily, postulates decision on the objection then and there. In other words, whether document is admissible or inadmissible is matter which should always be ruled upon at the time when the document is being proved or put in or the question asked to the witness. Such practice and procedure is fair to both parties.

(Emphasis supplied)

1 2008 SCC OnLine Bom 1017

4. Thus the trial court would have to necessarily decide on the objection and cannot postpone its decision for a later stage since it prejudices the rights of the Petitioner.

5. Accordingly, Petition is allowed.

6. The observations in the order dated 11th August 2023 is set aside. The trial Court shall Rule on the objections on its own merits at the earliest convenience. In any event, it is clarified that cross examination shall proceed only after ruling on the objections.

(Kamal Khata, J)