



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Writ Petition No.7140 of 2022

**M/S GENESIS, THR. ITS PARTNER - DR. SHIVAJI SUBHASHRAO DESHMUKH
VS
ALKA SATISH PANDE AND OTHERS**

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri A.A. Naik, Advocate for the Petitioner/s

**CORAM : ANIL S. KILOR, J.
DATED : 29.02.2024**

1. Heard.
2. A prayer of the petitioner to exhibit the document filed by the plaintiff, namely a legal notice dated 12.12.2011, issued prior to filing of the suit for recovery of possession and partition, was denied by the learned trial Court vide order below Exh.146 dated 23.08.2022, which is the subject matter of challenge in the present writ petition.
3. It is the case of the petitioner/defendant No.2 that the legal notice dated 12.12.2011 was filed by the plaintiff on record and in paragraph 10 of the plaint, there are pleadings as regard the notice and hence, the said notice needs to be exhibited.
4. It is further submitted that since it is an admitted fact that such notice was issued, it need not to be proved as per the provisions of the Indian Evidence Act, 1872, more particularly, as per Section 58. He therefore, submits that the application moved by the petitioner to exhibit the said document has

wrongly been rejected by the learned trial Court vide impugned order. In support of his submissions, he has placed reliance on the judgment of the Hon'ble Supreme Court of India, in the case of *Dahiben Vs. Arvindbhai Kalyanji Bhanusali (Gajra) Dead*¹ and the judgment of the Delhi High Court, in the case of *M/s. Rudnap Export-Import Vs. Eastern Associates Co. and others*².

5. None for the respondent No.1/plaintiff, though served.

6. Considering the submissions made by the learned counsel for the petitioner, I have perused the record and the impugned order.

7. Section 58 of the Indian Evidence Act shows that no fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings.

8. Admittedly, in paragraph 10 of the plaint, wherein the said notice was referred to by the plaintiff, has been denied by the petitioner in his written statement. There is no document produced on record showing that the defendant No.2 has admitted the said pleading as regards the said document. Therefore, the petitioner cannot rely upon Section 58 of the Indian Evidence Act, for this purpose.

1 (2020) 7 SCC 366

2 AIR 1984 Del 20

9. Moreover, the petitioner had an occasion during the cross examination of the plaintiff or during his oral evidence, to bring the said fact on record, which the petitioner has failed to do so.

10. Moreover, the judgment cited by the learned counsel for the petitioner in the case of *Dahiben* (supra) is of no assistance to the petitioner for the reason that, the finding recorded by the Hon'ble Supreme Court of India that, when a document referred to in the plaint, forms the basis of the plaint, it should be treated as a part of the plaint is in the context of the Order VII Rule 11 of the Code of Civil Procedure.

11. Similarly, in the case of *M/s. Rudnap Export-Import* (supra), the observation made by the Delhi High Court does not suggest that the document filed along with the plaint needs to be exhibited even if it is not proved. As far as the findings recorded by the Delhi High Court, the document filed along with the plaint may be looked into without any further proof at the instance of the opposite party are concerned, the petitioner may make this argument, if permissible in the law, at the time of final argument.

12. In the above referred backdrop, I do not find any error committed by the learned trial Court in rejecting the application (Exh.146) filed by the petitioner to exhibit the xerox copy of the legal notice dated 12.12.2011 filed by the plaintiff along with List 4 at Sr. No.5, in the suit. Accordingly, the writ petition is **dismissed**.

[ANIL S. KILOR, J.]