



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

WRIT PETITION NO.5579/2019

M/s. K. B. M. Foods (Pvt.) Ltd. and Ors. .Vs. M/s. Pankajkumar Niraj Kumar,
thr. its Partners and anr.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. G. B. Sawal, Advocate for petitioners.

Mr. M. R. Johrapurkar, Advocate for respondent No.1.

CORAM : ANIL L. PANSARE, J.

DATE : 12.06.2024

Mr. M. R. Johrapurkar, learned counsel for the respondent No.1, submits that one of the partners of the respondent namely, Niraj Kumar Hariram Agrawal, has expired.

2. Learned counsel for the petitioner seeks permission to delete his name.

3. Permission is granted. The name be deleted forthwith.

4. Heard.

5. The challenge is to the order dated 30.04.2019 passed below Exh.-1 in Special Civil Suit No.151/2006, by learned 22nd Jt. Civil Judge Senior Division, Nagpur, whereby the learned Judge has exhibited certain documents viz. Annexures 10 to 19 and 20(a) to 20 (i).

6. The grievance of the petitioners (original defendants) is that the respondent No.1-plaintiff is either not signatory to the documents or the document is not issued in favour of the petitioner – Company. Further some documents, which were said to be delivered to the petitioner, the Trial Court has

observed that those documents have come from proper custody of the respondent No.1 – plaintiff.

7. Thus, it is an argument that despite there being pleading to the contrary, the Trial Court has held that the documents have come from the proper custody. For the aforesaid reason and the reasons pleaded in the petition, the learned counsel submits that these documents, unless proved by the respondent No.1 – plaintiff in accordance with the provisions of the Indian Evidence Act, 1872, could not have been marked exhibit.

8. Learned counsel for the respondents submits that the pleadings were supporting the case of the respondents as regards production of documents as also its effect and, therefore, the Trial Court has correctly exhibited the documents.

9. I have gone through the documents as also the order passed by the Court below. One of the documents is at Annexure-9, purportedly issued by the plaintiff firm in the name of one Omprakash Agrawal (original defendant no.2, now deceased). This document is not issued in favour of the petitioner no.1 (original defendant No.1 – M/s. K.B.M. Foods (Pvt.) Ltd.).

10. The Counsel for the petitioners submits that the petitioners have disputed the entire transaction and, therefore, the documents purported to be issued in favour of Mr. Omprakash Agrawal could not have been marked exhibit by the Trial Court.

11. The next document is Annexure 10, which is only a receipt issued by the transporter. The consignor is respondent No.1 – plaintiff and consignee is shown to be the petitioner – defendant. Admittedly, the respondent No.1 is not signatory to this document. Therefore, unless the transporter is examined, this document could not have been marked exhibit.

12. To my mind, the law is well settled. Mere marking of documents as exhibit would not mean that the documents have been proved. The petitioners have raised objection in this regard before the Trial Court, which should serve the purpose inasmuch as the law supports the stand taken by the petitioners to the extent that the contents of the documents can only be said to be proved, if those contents are proved by inviting the witness who has authored the documents.

13. In the circumstances, the purpose will be served if the petition is disposed of with a clarification that the documents, which have been marked exhibit by the Trial Court in terms of impugned order, by itself will not be treated as proved documents. The parties are at liberty to proceed to deal with the documents, in accordance with the provisions of the Indian Evidence Act, 1872.

14. With the above clarification, the petition is disposed of.

(Anil L. Pansare, J.)