

07.05.2025

Court No.652
Sl. No.38
Mujahid

CO 1243 of 2023

**Sri Supriya Kumar Laha & Anr.
Vs.
Md. Rahatullah & Ors.**

Mr. Patha Pratim Roy,
Mr. Anirban Das,
Mr. Saikat Gayen

...for the petitioners

Mr. Animesh Mukherjee,
Md. Ali Ahasan

...for the opposite parties

Present petition has been filed challenging the Order No.71 dated 24th February, 2023 in Misc. P 77/2013 whereby the learned Trial Court allowed the application for the opposite parties for making the exhibit mark on sale deed executed on 9th August, 2011 and registered on 23rd November, 2011. The objection of the petition is two folds; firstly, that these being certified copy the learned Trial Court could not have allowed the making of exhibit mark and secondly, no opportunity was given to the petitioner for raising objection or conducting cross-examination of the same.

In ***Sudir Engineering Company vs. Nitco Roadways Ltd., 1995 II AD (Delhi) 189***, the court considers the question that “can a document marked

as an exhibit only if it has been proved” and “does mere endorsing of an exhibit number on the document tantamounts to expression of judicial opinion”. The Delhi High Court after considering the entire law on this point *inter alia* held:-

“(13) Admission of a document in evidence is not to be confused with proof of a document.

(14) When the Court is called upon to examine the admissibility of a document it concentrates only on the document. When called upon to form a judicial opinion whether a document has been proved, disproved or not proved the Court would look not at the document alone or only at the statement of the witness standing in the box; it would take into consideration probabilities of the case as emerging from the whole record. It could not have been intended of any law, rule or practice direction to expect the Court applying its judicial mind to the entire record of the case, each time a document was placed before it for being exhibited and form an opinion if it was proved before marking it as an exhibit.

(15) The marking of a document as an exhibit, be it in any manner whatsoever either by use of alphabets or by use of numbers, is only for the purpose of identification. While reading the record the parties and the Court should be able to know which was the document before the witness when it was deposing. Absence of putting an endorsement for the purpose of identification no sooner a document is placed before a witness would cause serious confusion as one would be left simply guessing or wondering which was the document to which the witness was referring to when deposing. Endorsement of an exhibit number on a document has no relation with its proof. Neither the marking of an exhibit number can be postponed till the document has been held proved; nor the document can be held to have been proved merely because it has been marked as an exhibit.

(16) This makes the position of law clear. Any practice contrary to the above said statement of law has no sanctity and cannot be permitted to prevail.

(17) Every Court is free to regulate its own affairs within the framework of law. Chapter Xiii

Rule 3 above said contemplates documents admitted in evidence being numbered in such manner as the Court may direct. I make it clear for this case and for all the cases coming up before me in future that the documents tendered and admitted in evidence shall be marked with numerical serial numbers, prefixed by Ex.P if filed by plaintiff or petitioner and prefixed by Ex.D if filed by defendant or respondent.”

Therefore, it is clear that the mere marking of a document as an exhibit does not amount to proof of a document such exhibition is only for the purpose of identification.

In view of the position of law as it exists now mere marking the document as an exhibit will not make the sale deed dated 9th August, 2011 registered on 23rd November, 2011 as having been proved. The court will form the judicial opinion after looking at the statement of the witnesses and all attended facts and circumstances. The petitioner shall be at liberty to raise all objections regarding the proof of the document and the learned trial court shall form the judicial opinion in accordance with law without being influenced by the present order.

In the circumstances, the present petition is disposed of with following directions:-

- i) The court shall independently examine the admissibility of sale deed executed on 9th August, 2011 and registered on 23rd

November, 2011 irrespective of exhibit marked on it.

- ii) The court shall decide the objections being raised by the petitioner on the admissibility of such document in accordance with law.

The present petition stands disposed of.

The learned Trial Court shall proceed with the matter expeditiously in accordance law.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Dinesh Kumar Sharma, J.)