



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2226 OF 2024

Shri Kantilal Behru Rathod & another .. Petitioners

VERSUS

Shri Babulal Pratap Rathod .. Respondent

Mr. S. S. Patil, Advocate for the Petitioners.
Mr. A. S. Radikar, Advocate for Respondent.

CORAM : R. M. JOSHI, J.

DATE : 16th SEPTEMBER, 2025.

PER COURT :

1. Petitioners/original Defendants are aggrieved by the order of the Trial Court of marking the document for the purpose of identification and the said order has been challenged in this Petition.

2. The facts on record indicate that Plaintiff examined himself at Exhibit 16 by filing affidavit of evidence under Order 18 Rule 4 of Code of Civil Procedure. During further examination-in-chief, he has been shown notice issued by his Advocate addressed to the Defendants. Plaintiff claims that the said notice was sent as per the instructions given to him. Since there was no endorsement on the notice to that effect, objection was raised by learned counsel for Defendants for exhibiting the said document. Learned Trial Court

exhibited the said document only for the purpose of identification thereof. At this stage, present Petition came to be filed.

3. It is sought to be argued on behalf of Petitioners/original Defendants that when the document is tendered in the evidence by party, the Trial Court is duty bound to decide the objection regarding admissibility of the said document at that stage itself and the said exercise cannot be deferred to any subsequent stage. To support this submission, he has placed reliance on judgment of this Court in case of Jyoti w/o Vasantrao Butle vs. Varsha Aniruddha Bansod, **2009(1) Mh.L.J. 335**.

4. Learned counsel for Respondent/original Plaintiff supported the impugned order by contending that the Trial Court is yet to take decision on the admissibility of the document and the document has been marked as exhibit only for the purpose of identification. Thus, it is his contention that this Petition itself is pre-mature one.

5. There cannot be any dispute with regard to the preposition sought to be canvassed by learned counsel for Petitioners

that at the stage of recording of evidence, the Court is required to decide admissibility of document and then to proceed to record further evidence. The document i.e. notice issued to the Defendants was claimed to have been issued on instructions of Plaintiff. Since there was no endorsement to that effect in the notice, the learned Trial Court thought it fit to mark exhibit to the said document only for the purpose of identification of the document. Without allowing Trial Court to consider the issue of admission or otherwise of document, present Petition came to be filed.

6. It is settled position of law that mere exhibit document does not mean the proof thereof nor it can be read in evidence unless proved in accordance with law. This Court, therefore, finds substance in the contention of learned counsel for Respondent/original Plaintiff that this is a pre-mature Petition and the issue of admission of the document is yet to be decided by Trial Court. In such circumstances, mere exhibition of document for identification of the same cannot be faulted with, at this stage. It would be for the Trial Court to decide the issue of admissibility of document after hearing both sides.

7. Suffice it to say that there is no merit in the Petition and hence it stands dismissed.

(R. M. JOSHI)
Judge

dyb