



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

983 WRIT PETITION NO. 9085 OF 2024

NIRMALA RAGHU DAMBE
VERSUS
PANDU ALIAS PANDURANG KRISHNATH DAMBE AND OTHERS

Mr. A. M. Reddy h/f Mr. A. U. Chandel, Advocate for the Petitioner
Mr. S. V. Dixit, Advocate for Respondent No.1.

CORAM : R. M. JOSHI, J.

DATE : 9th SEPTEMBER, 2025

P.C. :-

1. This Petition takes exception to the impugned order dated 04/05/2024, whereby the Trial Court has directed de-exhibiting of the document.

2. The Plaintiff filed Application before the Trial Court for de-exhibiting document (Exhibit 86) on the ground that the said document has not been duly verified before the Court before giving the the exhibit number. It is also contended that the parties were not present before the Court when the document was presented. On these amongst other grounds the de-exhibition of the document is sought.

3. The Defendant opposed the said Application by contending that there is no provision under the Code of Civil Procedure (for short 'CPC') for de-exhibiting the document. It is stated that the Application for de-exhibition document has been filed belatedly i.e. after about 8 to

9 months of exhibition thereof.

4. Learned Counsel for the Petitioner/original Defendant No.2 submits that the Court has already exhibited the said document and for want of any provision under the Court, de-exhibition of the document is not permissible.

5. Learned Counsel for Respondent No.1 supported the impugned order by contending that since the document has not been exhibited by following the due procedure as contemplated by the CPC, de-exhibition of the document is justified. To support his submissions he has placed reliance on the judgment of this Court in case of *Rekha w/o Ramrao Bhujang Vs. Smt. Subhadrabai w/o Keshavrao Bunage and others*,¹ and *Sunil Tukaram Bharadkar Vs. Santosh Gopichand Rane*².

6. On behalf of learned Advocate for Respondent No.1, it was sought to be argued that the manner in which the document has been exhibited creates suspicion as to whether the Judge himself has exhibited the document or not. In any case it is sought to be argued that since the relevant provisions of CPC are not followed before the exhibition of document, the exhibition be maintained.

7. During the course of the hearing, learned Counsel for Respondent No.1 has sought to make grievance in respect of the

¹ Writ Petition No.4603/2011

² 2006(3)Mh.L.J., 811

possible abuse/ misuse of the document by the Petitioner/Defendant No.2 by obtaining certified copy of the such exhibited document. Learned Counsel for the Petitioner/Defendant No.2, on instructions, makes statement that unless and until a finding is recorded by the trial Court with regard to the proof of the said document in accordance with law, the said document shall not be used in any other proceedings. This statement is accepted as an undertaking to this Court.

8. There cannot be made any dispute about the position of law that even if the document is exhibited, unless it is proved in accordance with law, the same cannot be read in evidence. Mere exhibition of document which does not amount to proof of the document as the exercise of giving exhibit number is only for identification of the document. In such circumstances paragraph No.6 of the impugned order indicates that it was the learned Judge who has exhibited the said document which subsequently found to be not exhibited in accordance with law. It therefore cannot be said that by committing mischief, someone marked exhibit to it.

9. Mere exhibition of the document since not the proof of the document, the Trial Court ought to have merely made observations to that effect in the impugned order and could have held that unless the document is proved in accordance with law, the same shall not be read in evidence. Instead the Trial Court has proceeded to de-exhibit the

document. The judgment cited supra deal with the said issue with observation that where there is exhibition of document without following the due procedure as contemplated by the CPC, the such document is not to be treated as an exhibited document. In other words these judgments also hold that mere exhibition of document does not amount to the proof of the document and contends thereof.

10. In view of the statement made by the learned Counsel for the Petitioner, on instructions, about not using the said document unless it is held to be proved by the Trial Court, the apprehension of the Respondent/original Plaintiff is being taken care. Suffice is to say that there was no reason for the Trial Court to de-exhibit the document and an observation to the effect that the document would lead any evidence only if it is proved by proper following procedure would have suffice the purpose.

11. As a result of above discussion, the impugned order deserves interference and it is set aside. It is clarified that though the document in question it is marked as Exhibit 86, the same shall not be read in evidence unless proved in accordance with law.

(R. M. JOSHI, J.)

ssp