

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 15661 OF 2025**

M. D. Choksey Construction Co. Pvt. Ltd. & ..Petitioners
Ors.

Versus

Babubhai Mohanlal Choksey ...Respondents
(deleted since deceased) through
Mrs. Ramaben B. Choksey & Ors.

Mr. Surel Shah, Senior Advocate a/w. Ms. Priya Chaubey i/b
ms. Sapana Rachure, for the petitioner.

Ms. Priyanka Kothari a/w Adv. Z. A. Jariwala & Adv. Ganesh
Ambekar i/b Jariwala Asso., for the Respondents.

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CORAM: N. J. JAMADAR, J.

DATE : 09th DECEMBER 2025

ORDER :

1. This petition under Article 227 of the Constitution of India assails an order dated 11th November, 2025 whereby the learned Judge, City Civil Court admitted the documents in evidence, and a subsequent order dated 15th November, 2025 in Miscellaneous Application No. 226/2025 whereby the said application preferred by the petitioners/original defendants for review of the first order dated 11th November, 2025, came to be dismissed.

2. Mr. Surel Shah, the learned Senior Advocate for the petitioners submitted that, the learned Judge, City Civil Court admitted the documents in evidence, by way of secondary evidence, though no foundation was laid in the affidavit in lieu of examination-in-chief of the plaintiffs witness (PW No. 1). In the process the learned Judge, unjustifiably ignored the glaring inconsistencies in the case of the plaintiffs in regard to the proper custody of the documents, and whether the documents qualified as secondary evidence. Mr. Shah would urge, though a notice under Section 66 of the Indian Evidence Act was given to the defendants, yet, no effective opportunity to respond to the said notice was provided to the defendants and the documents were admitted in evidence on the ground that such notice was given to the defendants.

3. An earnest endeavor was made by Mr. Shah to draw home the point that, the observations of the learned Judge in the order dated 11th November, 2025 leave no scope for the challenge on behalf of defendants even to the proof of the documents. It was further submitted that, though no reasons for admission of the documents, by way of secondary evidence, have been recorded in the order dated 11th November, 2025, the Review

Application came to be rejected on an untenable ground that the objections were not raised while marking the documents.

4. In opposition to this, Ms. Kothari, the learned Counsel for respondents/plaintiffs, submits that, the Writ Petition against the impugned order does not deserve to be entertained. The challenge is to the procedural orders passed by the learned Civil Judge and a writ of certiorari is not the remedy, unless it could be demonstrated that, the impugned orders are without jurisdiction, perverse or manifest an error of law apparent on the face of record. Even a mere error of law is not sufficient. To this end, Ms. Kothari placed reliance on the judgments of Supreme Court in the cases of **Central Council for Research in Ayurvedic Sciences & Ors. Vs. Bikartan Das & Ors¹**, **Malleeswari Vs. K. Saguna & Anr²**, Full Bench judgments of this Court in the cases of **Hemendra Rasiklal Ghia Vs. Subodh Mody³**, and **Bhartiben Shah & Ors. Vs. Gracy Thomas & Ors.⁴**, and a Division Bench judgment in the case of **Naresh Sundarlal Jain Vs. Udaipur Entertainment World Pvt. Ltd. & Anr⁵**.

1 2023 SCC OnLine SC 996
2 SLP (C) No. 12787/2025
3 2008 (6) Mh.L.J. 886
4 2013 SCC OnLine Bom 98
5 2023 SCC OnLine Bom 2107

5. Ms. Kothari would urge, the learned Judge, City Civil Court has recorded adequate reasons for admitting the documents in evidence. Review of the said order was wholly misconceived as there was neither any error apparent on the face of record nor any other sufficient cause. The petitioner sought to review the order by urging grounds which were not at all put forth, when the documents were marked in evidence.

6. At the outset, it is necessary to note that, the order dated 11th November, 2025 whereby the learned Judge marked the documents cannot be said to be sans reasons. The learned Judge observed, *inter alia*, that PW No. 1 had deposed that, none of the originals were traceable and the documents were in the custody of the defendants, to whom notice to produce the documents was given under Section 66 of the Indian Evidence Act. With regard to other set of documents filed along with list Exhibit-13A, the learned Judge recorded that, those documents were photostate/typed copies of the concerned documents and emanated from proper custody. Therefore, those documents were admitted as secondary evidence. It further appears that, the learned Judge dealt with the objections raised on behalf of

the defendants to the admissibility of those documents as secondary evidence.

7. The endeavor of Mr. Shah to urge that, the consideration on the aspect of admissibility the documents as secondary evidence was inadequate, therefore, does not merit acceptance. Indeed, brief reasons have been ascribed by the learned Judge. At the stage of marking of the documents, the learned Judge was not expected to record elaborate reasons.

8. I find substance in the submissions of Ms. Kothari that, at this stage and in this proceeding, this Court cannot delve into the evaluation of the correctness of admissibility of each and every document with reference to the deposition of PW No. 1 and the nature of the document of which secondary evidence was sought to be adduced. In any event, the order admitting the documents in evidence, can be assailed in the appeal, in the event decree is eventually passed against the defendants, under Section 105 of the Code of Civil Procedure, 1908.

9. The further submission of Mr. Shah that, by the impugned order of admission of the documents in evidence, the challenge on behalf of the defendants to the proof of documents is

foreclosed, deserves to be considered, and the position clarified.

Order XIII Rule 4 (1) of the Code provides as under:-

“4. Endorsements on documents admitted in evidence. -

(1) Subject to the provisions of the next following sub-rule, there shall be endorsed on every document which has been admitted in evidence in the suit the following particulars, namely:-

(a) the number and title of the suit,

(b) the name of the person producing the document,

(c) the date on which it was produced, and

(d) a statement of its having been so admitted;

and the endorsement shall be signed or initialled by the Judge;

‘Provided that in proceedings in the Bombay City Civil Court, the endorsement may be signed or initialled by such officer as the Principal Judge may authorise in this behalf.’

(Bombay Amendment).

10. It is trite, mere admission of documents in evidence does not amount to its proof. In the case of **Sait Tarajee Khimchand & Ors. Vs. Yelamarti Satyam & Ors⁶**., the Supreme Court has made it clear that, mere marking of an exhibit does not dispense with the proof of documents. Thus, the right of a party who disputes a document to urge that, the document has not been proved in evidence cannot be defeated merely because the document was admitted in evidence, or for that matter, the said

6 AIR 1971 SC 1865

party had not initially objected to the admissibility of the document.

11. A useful reference in this context can be made to a judgment of a learned Single Judge of Delhi High Court in the case of **Sudhir Engineering Company Vs. Nitco Roadways Ltd⁷**.

Para Nos. 13, 14 and 15 read as under:

“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 intendment 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 while was the document to which the witness was referring to which 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.”

12. The aforesaid being the position in law as regards the admission of document in evidence or the marking of the document as exhibit, it would be suffice to clarify that, the defendants would not be precluded from contending that, the documents which have been admitted and marked in evidence have not been duly proved or the correctness of the contents thereof has not been proved. Question of proof of documents either by way of primary or secondary evidence is, thus, kept open for adjudication by the learned Judge, City Civil Court.

13. Subject to the aforesaid clarification, the petition stands dismissed.

[N. J. JAMADAR, J.]