



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

WRIT PETITION NO. 4641 OF 2024

(Sau.Subhadra w/o Waman Patokar and another vs. Shri Ajinkya s/o Arun Donge)

*Office Notes, Office Memorandum of Coram,
appearances, Court's orders or the directions,
and Registrar's orders.*

Court's or Judge's order

Mr. Abhishek Tripathi, Advocate h/f Advocate for petitioner.
Mr. G.R.Kothari, Advocate for respondent.

CORAM : SIDDHESHWAR S. THOMBRE, J.
OCTOBER 06, 2025

1) Heard learned counsel for the petitioner and respondents.

2) The petitioner who was defendants No.1 and 2 in suit proceeding, challenged the order dated 26/06/2024 passed by the Civil Judge Senior Division, Khamgaon, District Buldhana on an application filed by the petitioners for de-exhibiting the photo copy of document titled as Agreement to Sale.

3) Learned counsel for the petitioners submitted that the learned trial Court failed to consider the provisions of the Evidence Act and the photo copy of the Agreement to Sale, cannot be marked and same is wrongly exhibited. He relied upon the judgment of this Court in the case of ***Sunil Tukaram Bharadkar vs. Santosh Gopichand Rane*** reported in ***2006 (3) Mh.L.J.811*** and more particularly, he invited my attention to the observations made by this Court in para 12 which reads as under :-

12. The proposition that there is no provision in the Civil Procedure Code or under the Evidence Act to de-exhibit the document once exhibited in evidence, cannot be found fault with. However, such exhibition

of documents shall be in accordance with the provisions of law. It is not mere endorsement on the document about the exhibit number that will constitute exhibition of the documents in evidence in accordance with the provisions of law. In order to say that the document has been exhibited in evidence, it has to be in accordance with the provisions of law comprised under Order 18, Rule 4 read with Order 13, Rule 4 of the Civil Procedure Code. If the document is exhibited in other manner or by adopting any other procedure, unless it is shown that such procedure has the sanction of law, exhibition of such document cannot be said to be an exhibition of document in evidence in accordance with the provisions of law. Being so, merely because on 19-7-2005 the Court had recorded in the Roznama that the document annexed to the affidavit evidence were exhibited as Exhibits 3 to 9, that itself did not constitute exhibition of those documents in evidence. Besides, the endorsement itself disclosed that the exhibition was "subject to objection". In other words, the documents were yet to be exhibited in evidence in accordance with the provisions of law under Order 18, Rule 4 read with Order 13, Rule 4 of the Civil Procedure Code and that function was performed by the trial Court on 16-8-2005. Being so, merely because the expression "de-exhibited" has been used in the order dated 16-8-2005, it would not amount to de-exhibition of documents in evidence. It would simply mean that the documents other than those which are exhibited in terms of Order 13, Rule 4 on 16-8-2005, are not admitted in evidence.

4) Per contra, learned counsel for the sole respondent submitted that when the document i.e. photo copy of the Agreement to Sale was exhibited, there was no objection raised by the plaintiff and the application was filed after a period of two and half years. The respondent tendered reply, same is taken on record. In support of his contention he relied upon the judgment of this Court in ***Writ Petition No.9085/2024*** in the matter of ***Nirmala Raghu Dambe vs. Pandu Alias Pandurang Krishnath Dambe and others*** and relied upon para 8 which reads as under :-

8. There cannot be made any dispute about the position of law that even if the 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.

5) Having heard the submissions of both the counsel and after going through the record and above referred cases, it can be considered that only because the document was exhibited it cannot establish right in favour of the parties. Therefore, in view of this fact, I do not find perversity in the order passed by the learned trial Court. It is clarified that though the document in question is marked as Exh.70, the same shall not be read in evidence unless proved in accordance with law. Hence, I pass the following order :-

ORDER

- 1) The Writ Petition stands dismissed.
- 2) No order as to costs.

(SIDDHESHWAR S. THOMBRE, J.)