

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2987 OF 2026

Yasmeen Ilyas Radiowala and Anr. **...Petitioners**

V/s.

Jamal Mohd. Makwana and Anr. **...Respondents**

Ms. Sonal Dabholkar *for the Petitioners.*

CORAM: SANDEEP V. MARNE, J.

DATED: 5 March 2026.

P.C.:

1) The Petitioner challenges the order dated 2 February 2026 passed by the learned Judge, Small Causes Court at Mumbai. By the impugned order dated 2 February 2026, the learned Judge has rejected the Application preferred by the Petitioner for recall of 'no say order' passed on 5 January 2026.

2) I have heard Ms. Sonal Dabholkar, the learned counsel appearing for the Petitioners and have considered submissions canvassed by her.

3) It appears that the suit was adjourned from time to time for Plaintiffs to file evidence. On account of failure of the part of the Plaintiffs to file evidence, the suit was also listed under the caption 'for dismissal'. However, on Application preferred by the Plaintiff, the suit

was removed from the caption 'for dismissal' on 10 June 2025. On 8 September 2025, Plaintiffs filed affidavit of evidence of PW1. Plaintiffs also filed list of documents which was marked as Exh-43. The Petitioners/Defendants were granted an opportunity to file their reply to the list of documents by order dated 8 September 2025. However, no reply was filed by the Defendants on 7 October 2025, 25 November 2025 and even on 5 January 2026. Finally, the Court proceeded to pass an order on 5 January 2026 observing that no say was filed. Hence, 'no say order' was passed. The Court thereafter marked the documents tendered alongwith the list by the Plaintiff. It appears that on 5 January 2026 Defendants' advocate appeared later and tendered an Application for taking the reply on record. The Defendants thereafter filed Application for recall of 'no say' order, which has been rejected by the impugned order dated 2 February 2026.

4) From the above, it is clear that repeated opportunities were granted to the Defendants to file reply on Plaintiffs' list of documents. In any case, all that is done by the Trial Court is to mark the documents based on Affidavit of Evidence of PW1. It is well settled position of law that mere marking of documents as Exhibits does not mean that the documents can be read in evidence. Admissibility of documents in evidence can always be argued at the time of final hearing of the suit. The Trial Court has merely marked some of the documents as Exhibits and some of the documents as Articles. In that view of the matter, no prejudice is caused to the Defendants on account of refusal by the Trial Court to recall the 'no say' order. If any document filed by Plaintiffs is not admissible in evidence, Defendants would be at liberty to question

admissibility of such document. Considering the conduct of Defendants, this court is not inclined to exercise extraordinary jurisdiction under Article 227 of the Constitution of India. Mere observation of the Court that admissibility of documents is decided would not come in the way of demonstrating that a particular document is not admissible in evidence and cannot be read.

5) Considering the above position, no interferece is warranted in the impugned order. Writ Petition is accordingly **dismissed**.

[SANDEEP V. MARNE, J.]

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