



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

Writ Petition No.1357/2025

Sau. Asha V Jayant

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. A.R. Deshpande, Advocate for petitioner.

Mr. P.S. Uparwat, Advocate for respondent.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE : 19-01-2026.

Heard learned Counsel for the petitioner.

2. Petitioner's challenge is to order dated 19-08-2024 passed by the trial Court, rejecting the objection about exhibiting of the document of agreement to sale and also the order dated 17-12-2024 passed on the application for recalling of this order.

3. In this petition, while issuing notices, this Court has passed order dated 17-03-2025, which is reproduced below :-

“Heard.

2] The petition arises out of an objection raised by the petitioner to exhibit a document titled 'Agreement to Sale', which was tendered by the respondent – plaintiff in chief examination. The objection to exhibit the document is taken on the ground that the agreement to sale, which contains recital of delivery of possession, was neither properly stamped nor duly registered. The trial Court had exhibited the agreement vide order dated 6/3/2023. This order was challenged by the petitioner before this Court in Writ Petition No. 5835/2023, and vide order dated 13/2/2024, the impugned order was quashed and set aside with a direction to the trial Court to decide the objection raised by the petitioner afresh.

3] Despite such direction, the trial Court has passed the impugned order on 19/8/2024 postponing the decision on objection on the ground that the agreement to sale has been already marked Exhibit – 18.

4] The learned Counsel for the petitioner submits that once the order dated 6/3/2023, exhibiting agreement to sale, was quashed and set aside, there arises no question of document having been exhibited. He submits that in any case, the objection, as raised, ought to have been decided by the trial Court in terms of law laid down by Full Bench of this Court in Hemendra Rasiklal Ghia Vs. Subodh Mody [2008(6) Mh.L.J. 886].

5] In fact, the petitioner had filed application to recall the order by quoting the aforesaid judgment. However, the trial Court was pleased to reject the application vide impugned order dated 17/12/2024.

6] Issue notice to the respondent returnable on 21/4/2025.

7] In the meantime, there shall be stay to the proceedings being R.C.S. No. 321/2019 pending before 7th Joint Civil Judge Senior Division, Akola.”

4. Learned Counsel for the petitioner has invited my attention to order dated 13-02-2024 passed by this Court in Writ Petition No.5835/2023. On the basis of this order it is pointed out that the trial Court was thus required to de-exhibit the said document i.e agreement to sale which was exhibited as Exhibit-18 since the order dated 06-03-2023 passed at Exhibit-15 was quashed and set aside by this Court. It is thus submitted that the impugned order observing that since the document is already marked as exhibit and its admissibility shall be decided at the time of final hearing is an unsustainable order.

5. Learned Counsel for the respondent opposed the petition and submitted that the document is merely marked as exhibit, however the issue of admissibility of the document is kept open and as such he supports the impugned order.

6. Having regard to the order dated 13-02-2024 passed by this Court in Writ Petition No.5835/2023 and the position of law referred

therein in the matter of *Naginbhai P. Desai vs Taraben A Sheth*, reported in *2003(1) Mh.L.J. 994*, the trial Court was required to de-exhibit the said document of agreement to sale. However, the reason for rejection of the objection about admissibility being an issue to be decided at the stage of final hearing is an erroneous approach. Hence, the impugned order dated 19-08-2024 is unsustainable and deserves to be quashed and set aside. So also, order dated 17-12-2024 passed by the trial Court on application at Exhibit 35 also deserves to be quashed and set aside.

7. It is accordingly directed that the document of agreement to sale shall not be treated to be an exhibited document at this stage. It is however clarified that the plaintiff is at liberty to take appropriate steps in accordance with law for getting the document exhibited. The issue of admissibility of the said document shall be a subject matter of adjudication at the stage of final hearing of the suit.

8. In view of this, writ petition is accordingly allowed. No order as to costs.

(Prafulla S. Khubalkar, J.)