

MHKO050004632019



SCC No.307/2019

Order below Exh.48

Sagar Ramachandra Naik Vs.
Sou. Chhaya Laxman Koravi
CNR No.MHKO050004632019

The instant application is filed by the complainant praying for de-exhibition of two account statements i.e. Exh.45 & Exh.46.

2. Perused the application and the reply filed by the accused. Heard respective counsels appearing for the both the sides.

3. Learned counsel Mr. Patel appearing for the complainant submitted in consonance to his application. He submitted that the statements filed below Exh.45 & Exh.46 by A.W.No.2 namely Umesh Arvind Chavan on 19/08/2023 is not in consonance to the provisions of section 65B of Indian Evidence Act, 1872. He submits that material admissions are given in cross-examination by the said witness. He further submits that A.W.No.2 is not a controlling authority and therefore in absence of a valid section 65B Certificate, the account extracts below Exh. 45 & 46 cannot be read into evidence. He accordingly prays for de-exhibition of Exh.45 & Exh.46. He has placed his reliance upon landmark judgment of Hon'ble Apex Court in case of Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal in Civil Appeal Nos.20825-20826 of 2017.

4. Per contra learned counsel Mr. Latake appearing for the accused vehemently opposed the instant application on the ground that the statements below Exh.45 & 46 are duly proved and hence the application be rejected.

5. I have carefully gone through the record. At the very

outset, it is necessary to note here that, the complainant by way of instant application is praying for de-exhibition of Exh.45 & Exh.46. It is settled position of law that it is not permissible for the trial court to de-exhibit any document as provision of law nowhere empowers the court to de-exhibit the document once it is admitted in evidence.

6. Even otherwise, it is settled position of law that mere admission of a document in evidence does not amounts to its proof. Nor mere marking of exhibit on a document does not dispense with its proof, which is otherwise required to be done in accordance with law. Thus, considering all the above aspects, I am of the view that merely exhibiting documents does not amount to its proof. The complainant it at liberty to raise the similar ground during the course of final arguments. At this juncture, no case is made out. Hence, I proceed to pass following order :-

ORDER

1. The application stands rejected.
2. The complainant shall be at liberty to raise the ground mentioned in the application during the course of final arguments which shall be decided by Court in the judgment.
3. Matter to proceed further.

(Dictated and pronounced in open Court)

Date- 18/09/2023
Ichalkaranji

(S. A. Ingley)
Judicial Magistrate First Class
Court No.2, Ichalkaranji

C E R T I F I C A T E

I affirm that the contents of this P.D.F. file
Judgment/ Orders are same, word to word, as per the original
Judgment / Order.

Name of stenographer	R. D. Jadhav
Name of Court	Shri. S. A. Ingley 2 nd Jt. C.J.J.D & J.M.F.C., Ichalkaranji.
Date of Dictation	18/09/2023
Order signed by P.O. on	18/09/2023
Order uploaded on	18/09/2023