

MHWS080004522015 	R.C.S.No.18/2016 Santosh Narayan Choudhari and 01 another Vs Bandu Sakharam Rajurkar and 01 another <u>Order below Exh. 41</u>
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This is the application filed by defendant for discarding the evidence of PW-1, recorded below Exh.33 and for De-exhibiting the document marked exhibit during the PW-1 evidence.

2. According to defendant, the plaintiff Santosh has filed his evidence affidavit at Exh.33 on 36/04/2022. The evidence of the Santosh as PW-1 was recorded and documents were exhibited on 07/10/2022. Then after the advocate for the plaintiff Santosh has informed the court that the Santosh PW-1 is suffering for heart disease therefore he is unable to remain present before court for the cross examination. Therefore the defendant by way of this application praying for discarding the evidence of PW-1, recorded below Exh.33 and for De-exhibiting the document marked exhibit during the evidence of PW-1.

3. The plaintiff has filed his say on overleaf of this application and opposed. He stated that there is no provision as to de-exhibiting the documents once exhibited. Therefore, it cannot be de-exhibited. Hence, he prayed for rejection of the application.

4. Heard Ld. advocates both sides. Perused record.

5. On perusal of record it appears that the plaintiff Santosh has filed his evidence affidavit at Exh.33 on 36/04/2022. The evidence of the Santosh as PW-1 was recorded and documents were exhibited on 07/10/2022. Thenafter the advocate for the plaintiff Santosh has informed the court that the Santosh PW-1 is suffering for heart disease therefore he is unable to be present before court for the cross examination.

6. The advocate for the defendant has relied on the judgment of Hon'ble Bombay High Court, in the case of **Amrutlaa Pandey v/s Sitaram Pandey Writ Petition No. 9211 of 2024** dated 09/07/2024. it was held that,

“ 5. Once the witness action of the witness of Plaintiffs i.e. PW-1 stands discarded in view of his non-availability for cross-examination, naturally Affidavit of evidence of the Plaintiffs witness No.1 has to be discarded and it stands ousted from the record and file of the Court. In so far as re-exhibiting the documents is concerned, it & seen that the said documents were exhibited prior to the filing of the Affidavit of evidence by Plaintiffs and Defendants after undertaking the said exercise under the provisions of the Indian Evidence Act, 1872. None of the documents were exhibited during the examination-in-chief of the Plaintiffs' witness No.1.”

7. As per the judgment of the **Amrutlal** (Supra) the evidence of witness stands discarded due to his non-availability for cross-examination after chief examination and the evidence Affidavit of such witness has to be discarded and it stands ousted from the record and file of the Court. In present suit also the evidence of the Santosh as PW-1 was recorded and documents were exhibited on 07/10/2022. As PW-1 Santosh is suffering for heart disease therefore he was unable to remain present before court for the cross examination. Therefore as per the ratio laid down in the case of **Amrutlal** (Supra) the evidence of Snatosh as PW-1 recorded below Exh.33 needs to be discarded.

8. The defendant also prayed for the de-exhibiting the document exhibited during the evidence of Snatosh as PW-1 recorded below Exh.33. While dealing with into the issue as to de-exhibiting of document, I availed an opportunity to go through the Judgment of Hon'ble Apex Court in the case of **Bomen P. Irani and ors. vs. Maniklal P. Gala and ors.** reported in 2003 SCC OnLine Bom 945 and **Bipin Shantilal vs. State of Gujarat** reported in 2001 SCC OnLine Sc 445 wherein, the Hon'ble Apex Court has observed that,

“ the trial Court having once admitted the document in evidence and exhibited, then it was not permissible for the trial Court to De-exhibit those documents as per the provisions of Law as nowhere

empowers to Court to De-exhibit documents once it is admitted in evidence. It is to note that in any case the document having been once marked as exhibit in the evidence, any decision regarding the admissibility of the document could have been taken at the time of disposal of the suit. It is also the matter of record that the trial Court could not have exhibited the documents unless there was fair opportunity given to the defendant to raise necessary objections as regards the admissibility thereof and therefore merely because on filing of affidavit some exhibit numbers were given to the documents, it could not be said to be an act of the exhibition of the documents in evidence in terms of the evidence of provision of Law.”

9. The Hon'ble High Court of Bombay in the case of **Sultan Suleman Qureshi vs. Mrs. Anisa Raffiq Charolia and ors.** reported in 2016 SCC OnLine Bom 9798, held that,

“as per the settled position in Law, once the documents are marked at exhibits, they cannot be De-exhibited. Once an evidence document is marked at exhibit by the Court, it cannot be reversed. Though, such an exhibit can be proved not proved or disproved.”

10. It is settled law that documents once exhibited can

not be de-exhibited. However in present case the the plaintiff Santosh has filed his evidence affidavit at Exh.33, on 36/04/2022. The evidence of the Santosh as PW-1 was recorded and documents were exhibited on 07/10/2022. However Santosh PW-1 filed to remain present for cross examination as he is suffering for heart disease. As discussed above and as per the ratio laid down in the case of **Amrutlal** (Supra) the evidence of Snatosh as PW-1 recorded below Exh.33 needs to be discarded. Therefore, the documents numbered exhibit during the evidence of the Snatosh as PW-1 recorded below Exh.33 also need to be discarded. Hence, with this stand, following order is passed:

ORDER

1. Application is allowed.
2. The evidence of PW-1 Santosh recorded below Exh.33 is discarded.
3. The documents numbered exhibit during the evidence of PW-1 Santosh recorded below Exh.33 also discarded.
4. The concerned clerk is directed to remove the exhibit number from the said documents.
5. Cost in cause

Sd/-

(Shri. Kiran Deepak Lukde)

Date :- 05/03/2026.

2nd Jt. Civil Judge Junior Division,
Risod.

CERTIFICATE

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

Name of the Stenographer : Akram Siddiqui.

Name of court : 2nd Jt C.J.J.D.& JMFC;Risod

Date : 05.03.2026

Judgment/Order signed by the
Presiding Officer : 05.03.2026

Judgment/Order uploaded on : 05.03.2026