

Mat. Suit No. 176 of 2019
CNR No. WBCB01-002336-2019

Present : **Subrata Ch. Polle,**
 District Judge, WB01273

Order No. 25, dated, 31-05-2023

Today is fixed for recording evidence of the petitioner.

The petitioner Debdeep Ghosh has adduced evidence as P.W.1 on oath in respect of his examination-in-chief. He has produced the certified copy of the order in respect of the criminal case and those are collectively marked as Exhibit-1. He has also produced a copy of the judgement passed by the Hon'ble High Court and the same is marked as Exhibit-2.

The witness has also produced the certificate purportedly made under section 65B of the Indian Evidence Act, 1872 and the documents being the printout of Communications in WhatsApp between the respondent and another person.

The learned counsel appearing for the respondent-wife has raised objection as to the admissibility of the documents.

The submission of the learned counsels appearing for the contesting parties are considered.

In **Bipin Shantilal Panchal - versus - State of Gujarat**, reported in **(2001) 3 SCC 1** on the issue of admissibility of any document at the time of adducing evidence, the Hon'ble Supreme Court has been pleased to hold as follows :-

“14. When so recast, the practice which can be a better substitute is this: Whenever an objection is raised during evidence-taking stage regarding the admissibility of any material or item of oral evidence the trial court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided at the last stage in the final judgment. If the court finds at the final stage that the objection so raised is sustainable the Judge or Magistrate can keep such evidence excluded from consideration. In our view there is no illegality in adopting such a course. (However, we make it clear that if the objection relates to deficiency of stamp duty of a document the court has to decide the objection before proceeding further. For all other objections the procedure suggested above can be followed.)”

Contd.....

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Relying on the aforesaid principle, it appears that no will be prejudiced, if the documents are accepted with marking objections. The objection will be decided at the time of final hearing. Accordingly, the certificate under section 65B of the Indian Evidence Act, 1872 is marked as Exhibit-3 and the printout of the WhatsApp communication are collectively marked as Exhibit-4 with objection.

The witness is cross-examined in part.

On prayer of the learned counsel for the respondent, further cross-examination of P W1 is deferred till **11-07-2023**.

Fix **11-07-2023, 12-07-2023 and 13-07-2023** for further cross-examination of P.W.1 and other witnesses of the petitioner.

Sd/- S.C.Polle
District Judge
Cooch Behar