

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

WRIT PETITION NO. 1002/2011
GANESHSINGH MAHADEOSINGH THAKUR AND ORS ..VS.. KAMALESHKUMAR
KALIKAPRASAD GUPTA AND ORS

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders
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Shri Rohit Joshi advocate for petitioner s
Shri G.G.Mishra adv for respondents

CORAM : SMT. VASANTI A. NAIK, J.
D A T E : APRIL 30, 2011.

Heard Shri Joshi, for the petitioners and Shri Mishra
for the respondent no.1 to 3.

It appears on hearing the learned counsel for the
parties and on perusal of the impugned order dated
27.1.2011 that the trial court was justified in holding that
the document was an old document and in view of the
provisions of section 90 of the Evidence Act, the document
ought to have been exhibited. However, it appears that the
document could not have been exhibited by filing an
application and the same ought to have been exhibited by
the respondent by entering into witness box and then
tendering the document, while tendering the evidence.

Shri Mishra, the learned counsel for the respondents
states that even in case the evidence of the respondents is
closed, the respondents would apply before the trial court
only for the purpose of tendering additional oral evidence,

merely for the purpose of getting the document exhibited.

In the facts and circumstances of the case and in the interest of justice, since the respondents had failed to get the document exhibited by tendering the oral evidence, the respondents are granted liberty to file an appropriate application before the trial court.

The trial court may then exhibit the document in case it finds that the same needs to be exhibited, in view of the oral evidence tendered by the respondents and in view of the provisions of section 90 of the Evidence Act.

Hence, the order dated 27.1.2011 is set aside with a direction to the trial court to decide the application in case it is filed by the respondents for tendering oral evidence for the purpose of exhibiting the Exchange Deed, which according to the counsel for the respondents is a material document, as far as the case of the respondents is concerned. The learned counsel for the respondents states that an appropriate application shall be moved before the trial court at the earliest.

The ground in regard to the admissibility of the document in the absence of the pleadings as raised by the petitioner in the trial court, is however, kept open.

The writ petition stands disposed of with no order as to costs.

JUDGE

SMP