

Delhi High Court Sudir Engineering Company vs Nitco Roadways Ltd. on 23 March, 1995 Equivalent citations: 1995 IAD Delhi 189, 1995 (34) DRJ 86, 1995 RLR 286 Author: C Lahoti Bench: R Lahoti JUDGMENT C. Lahoti, J. (1) What appears prima facie to be an insignificant and inconsequential aspect of judicial proceedings has however assumed significance in my view as it is a matter of y-to-day recurrence witnessed, by me sitting on the Original Side. Can a document marked as an exhibit only when it has been proved? Does mere endorsing of an exhibit number on the document tantamount to expression of judicial opinion on its proof? (2) Before me, the plaintiff is standing in the witness box. His pleaded case is that he had delivered certain documents to a transporter in the presence of Notary Public and the Notary Public had made a report of the proceedings which had taken place in his presence. The plaintiff has in his deposition referred to the report of the Notary Public. Before the Court Master could endorse an exhibit number on the report of the Notary Public, counsel for the defendants has sprung up to raise an objection on the document being so endorsed stating - "the document has not yet been proved; how it can be marked as an exhibit?" (3) Not only the counsel in the case, but also other members of the Bar usually appearing on the Original Side and present in the Court have stated that it has been a practice of this Court not to mark a document as an exhibit so long as it has not been proved and endorsing of a document with an exhibit mark is treated as a 'proof' of the document pre-empting the right of the party disputing the document to contend at the final hearing that the document was not proved in the manner contemplated by law. (4) I am told that in accordance with the practice of this Court :- (i) The documents which are admitted by the opposite parties during the process of admission/denial of the documents conducted either in the Court or before the Joint Registrar, are marked as EX.P- 1, P-2 or Ex. D-1 and D-2 and so on; (ii) The documents which are tendered in evidence during the examination of any witness are marked as Ex.PW.1/1, Ex.PW1/2, PW.2/1 or Ex.DW.1/1, DW.1/2, DW.2/1 and so on; the earlier part denoting the number of the witness and the latter part denoting serial number of the documents which come to be tendered in evidence during the statement of that witness; that is to say a fresh serial number on the documents begins with the examination of every new witness; (iii) Those documents which are insisted on being marked as Exhibit by one party but disputed by the other or when for any reason it becomes necessary to mark any document for the purpose of identification it is marked as Ex.A and EX.B and so on i.e. by using an alphabet and not a number. (5) I requested the learned members of the Bar to enlighten me on the source or foundation of this practice whether in any act or in any rules or practice directions. None has obliged me. I can presume that there is none. (6) Let me now look at the law. Any document filed by either party passes through three stages before it is held proved or disproved. These are : First stage : when the documents are filed by either party in the Court; these documents though on file, do not become part of the judicial record; Second stage: when the documents are tendered or produced in evidence by a party and the Court admits the documents in evidence. A document admitted in evidence becomes a part of the judicial record of the case

and constitutes evidence. Third stage: the documents which are held 'proved, not proved or disproved' when the Court is called upon to apply its judicial mind by reference to Section 3 of the Evidence Act. Usually this stage arrives 31 the final hearing of the suit or proceeding. (7) Order 13 Rule 4 sub-rule (1) of the Civil Procedure Code provides as under :- 4.(1) 'Subject to the provisions of the next following sub-rule, there shall be endorsed on every document which has been admitted in evidence in the suit the following particulars, namely :- (a) the number and title of the suit, (h) the name of the person produced the documents, (c) the date on which it was produced, and, (d) a statement of its having been so admitted; and the endorsement shall be signed or initialled by the Judge. (2) xxx xxx xxx (Punjab & Haryana amendment) :- "Provided that where the Court is satisfied that the 'document, not endorsed in the manner laid down in the above rule, was in fact admitted in evidence, it shall treat the document as having been properly admitted in evidence unless non-compliance with this rule has resulted in miscarriage of justice." - Haryana Gaz., 11-6- 1974, Pt.III (L.S.) p.687." (underlining by me) (8) I am firmly of the opinion that mere admission of document in evidence does not amount to its proof. 8.1 Admission in evidence of a party's document may in specified cases exclude the right of opposite party to challenge its admissibility. The most prominent examples are when secondary evidence of a document within the meaning of Sections 63-65 of the Evidence Act is adduced without laying foundation for its admissibility or where a document not properly stamped is admitted in evidence attracting applicability of Section 36 of Stamp Act. 8.2 But the right of a party disputing the document to argue that the document was not proved will not be taken away merely because it had not objected to the admissibility of the document. The most instructive example is of a Will. It is a document required by law to be attested and its execution has to be proved in the manner contemplated by Section 68 of the Evidence Act read with Section 63 of the Succession Act. The party challenging the Will shall not be excluded from demonstrating at the final hearing that the execution of the Will, though exhibited, was not proved is statutorily required. (9) The law laid down by the Supreme Court in *Sait Taraji Khimechand VS. Yelamarti Satvam* is :- 'The mere marking of an exhibit does not dispense with the proof of documents' (10) Two Division Benches of Lahore High Court *Ferozchin VS. Nawnb Khan*, Air 1928 Lahore 432 and *Hari Singh VS. Firm Karam Chand*, Air 1927 Lahore 115 have clearly held that the admission of documents under Order 13 Rule 4 Civil Procedure Code does not bind the parties and unproved documents cannot be regarded as proved nor do they become evidence in the case without formal proof (11) I have looked into the provisions of Delhi High Court (Original Side) Rules 1967 also. Chapter Xiii Rule 3 provides for documents admitted in evidence being numbered in such manner as the Court may direct. 11.1 There is an Original Side Practice Direction (No.3 of 1974), which vide paras 6 and 7 provides :- 6. The Court Master of the Court shall take charge of every document or object put in as an exhibit during the trial of any case and shall mark or label every exhibit with a letter or letters indicating the party by whom the exhibit is put in or the witness by whom it is proved, and with a number, so than all exhibits put in by

a party, or proved by a witness, are numbered in one consecutive series. 7. The Court Master of the Court shall examine all documents produced or offered in evidence and bring any apparent insufficiency of the court fee or other stamps to the notice of the Judge for orders. He shall endorse all documents admitted in evidence and all documents rejected with the particulars required by law and sign or initial such endorsement. (underlining by me) 11.2 A bare reading of this Practice Direction shows that it is not artistically drafted 'Proved' as used in para 6. is nothing else except used loosely for 'put in' 'produced' or 'tendered'. After all the question of proof is not answered by Court during the statement of witnesses simultaneously with production of documents nor does the Court Master decide upon proof of documents. Para 7 makes it clear that endorsement file by the Court Master of exhibit number, on a document is 'admission in evidence' and not proof of a document. (12) In Baldeo Sahai VS. Ram Chander & Ors., Air 1931 Lahore 546 it was said :- "There are two stages relating to documents. One is the stage when all the documents on which the parties rely are filed by them in Court. The next stage is when the documents 'MC. proved and formally tendered in evidence. It is at this later stage that the Court has to decide whether they should be admitted or rejected. If they are admitted and proved then the seal of the Court is put on them giving certain details laid down by law, otherwise the documents are resumed to the party who produced them with an endorsement thereon to that effect." A reading of the report shows that it was the practice of the Court to endorse the documents soon on their filing which practice was deprecated and hence slopped. The word "proved" has been used by the Division Bench in the sense of 'proposed to be proved' as is clear from its having been used Along with the word 'tendered' or "admitted" in evidence. The word proved has been loosely used for describing the stage after filing of the documents, when the Court would decide only whether they should be admitted or rejected. The Division Bench cannot be read as holding that the document is not to be endorsed with an Exhibit number unless and until proved. As stated in para 6 hereinabove, the stages of tendering/admitting/rejecting in evidence and holding a document proved - are two distinct and different stages, not one. They are respectively the second and third stages. (13) Admission of a document in evidence is not to be confused with proof of a document. (14) When the Court is called upon to examine the admissibility of a document it concentrates only on the document. When called upon to form a judicial opinion whether a document has been proved, disproved or not proved the Court would look not at the document alone or only at the statement of the witness standing in the box; it would take into consideration probabilities of the case as emerging from the whole record. It could not have been intendment of any law, rule or practice direction to expect the Court applying its judicial mind to the entire record of the case, each time a document was placed before it for being exhibited and form an opinion if it was proved before marking it as an exhibit. (15) The marking of a document as an exhibit, be it in any manner whatsoever either by use of alphabets or by use of numbers, is only for the purpose of identification. While reading the record the parties and the Court should be able to know which was the document before the witness when it was

deposing. Absence of putting an endorsement for the purpose of identification no sooner a document is placed before a witness would cause serious confusion as one would be left simply guessing or wondering while was the document to which the witness was referring to which deposing. Endorsement of an exhibit number on a document has no relation with its proof. Neither the marking of an exhibit number can be postponed till the document has been held proved; nor the document can be held to have been proved merely because it has been marked as an exhibit. (16) This makes the position of law clear. Any practise contrary to the above said statement of law has no sanctity and cannot be permitted to prevail. (17) Every Court is free to regulate its own affairs within the framework of law. Chapter Xiii Rule 3 above said contemplates documents admitted in evidence being numbered in such manner as the Court may direct. I make it clear for this case and for all the cases coming up before me in future that the documents tendered and admitted in evidence shall be marked with numerical serial numbers, prefixed by Ex.P if filed by plaintiff or petitioner and prefixed by Ex.D if filed by defendant or respondent. (18) Reverting back to the case before me, let the report of Notary Public be endorsed with an exhibit number by the Court Master.