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BHIMA TIMA DHOTRE V. THE PIONEER CHEMICAL CO. (1968) 70 BOM LR 683¹

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Case Title: Bhima Tima Dhotre *v.* The Pioneer Chemical Co.

Citation: 1967 SCC OnLine Bom 114: (1968) 70 Bom LR 683 Mah LJ 879

Court: Bombay High Court (Original Civil Jurisdiction)

Bench: Justice Vimadalal

Date of Decision: 23 June 1967

INTRODUCTION

This case is an important decision of the Bombay HC that deals with the principles governing the admissibility and proof of documentary evidence under the **Indian Evidence Act, 1872**. The judgement furnishes us with an understanding on the **distinction between admissibility, proof, and the probative value of documentary evidence.**

FACTS OF THE CASE

The dispute arose during the trial of a civil suit filed by **Bhima Time Dhotre** against The **Pioneer Chemical Company** in the Bombay High Court. The Plaintiffs' counsel examined all witnesses but before resting his case, he applied for the admission of a **postcard dated August 22, 1958**, during the course of leading evidence. This postcard had not been admitted as an exhibit, but just tagged as "X" for the purpose of identification. The plaintiffs' counsel argued that the document had been duly proved through Plaintiff No. 2, who testified to the handwriting and signature appearing on the postcard. Hence, it was argued that once the execution was proved, the document must be admitted into evidence and its contents could be relied upon.

¹ Bhima Tima Dhotre vs The Pioneer Chemical Co. (1968)70 BOM LR 683 (1968) (India).

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The counsel for the defendant objected to this request. He upheld the previously set precedent in the case of *Madholal Sindhu v. Asian Assurance Co. Ltd.*⁴, where, it was held that merely proving the signature does not amount to proof of the contents of the document. According to that ruling, unless the author or signatory of the document is called as a witness, the truth of the contents cannot be established. Furthermore, the counsel emphasized in the matter of **Mr. D. and Mr. S.**⁵, a Division Bench ruling where the Hon'ble Court had asserted Justice Bhagwati's perspective that the formal proof of a document does not establish the reliability and truthfulness of the contents. Even if the signature is proved, merely that does not prove the truth of what is written in the document.

The plaintiff, although, argued that the approach was not correct. The contents of the document are reliable or true is not a matter of admissibility but of appreciation and its probative value. It was contended that once the document is proved under **Section 67**⁶ of the Indian Evidence Act it becomes admissible. The dispute in the present case was procedural in nature and does not concern the substantive part. The issue pertained not to the merits of the civil dispute but to the evidentiary threshold for the admissibility of the evidence. Justice Vimadalal was in disagreement with the Division Bench's interpretation, but he was bound by judicial discipline to follow it and accordingly declined to admit the postcard in evidence.

The case thus encloses a classic evidentiary dispute in relation to the **distinction between proof of contents and proof of execution** under the Indian Evidence Act.

ISSUES

The argument raised several questions regarding documentary evidence under the **Indian Evidence Act, 1872**. The issues were:

1. **Whether** a document, whose handwriting and signature are proved under **Section 67**⁷ of the India Evidence Act, 1872, can be admitted in evidence without examining its signatory.
2. **Whether** proof of execution amounts to proof of the truth of the contents of the documents?
3. **Whether** calling the signatory of the document is mandatory to prove its contents?
4. Is 'admissibility' distinct from 'probative value'?

⁴ *Madholal Sindhu v. Asian Assurance Co. Ltd.*, (1945) 56 Bom. L.R. 147 (1945) (India).

⁵ *Mohammad Yusuf and Anr v. D and Anr.*, (1961) 68 Bom. L.R. 228 (1961) (India).

⁶ Indian Evidence Act, 1872, § 67, No. 1, Acts of Parliament, 1872 (India).

⁷ Indian Evidence Act, 1872, § 67, No. 1, Acts of Parliament, 1872 (India).

5. **Does** the ‘Hearsay Rule’ apply to documentary evidence in the same manner as they apply to oral evidence?

ARGUMENTS IN BRIEF

I. PLAINTIFF’S ARGUMENTS

The plaintiff argued that:

- The postcard had been duly proved in accordance with **Section 67**⁸ of the Indian Evidence Act.
- Once execution is proved, the document becomes admissible.
- **Sections 59 and 61**⁹ clearly provide that contents of documents may be proved by primary evidence.
- Requiring oral testimony of the author would defeat the very purpose of documentary evidence.
- Admissibility and truth are separate concepts.

The plaintiff argued that once admitted, the Court may decide what weight to assign to it.

II. DEFENDANT’S ARGUMENTS

The defendant relied heavily on:

- **Madholal Sindhu v. Asian Assurance Co.**¹⁰
- **In the matter of Mr. D. and Mr. S.**¹¹

The defence argued:

- Proof of signature does not prove truth of contents.

⁸ Ibid.

⁹ Indian Evidence Act, 1872, § 59 & 61, No. 1, Acts of Parliament, 1872 (India).

¹⁰ Madholal Sindhu v. Asian Assurance Co. Ltd., (1945) 56 Bom. L.R. 147 (1945) (India).

¹¹ Mohammad Yusuf and Anr v. D and Anr., (1961) 68 Bom. L.R. 228 (1961) (India).

- Only the author can testify to the truthfulness of statements.
- Without examining the writer, the document's contents cannot be relied upon.

Thus, the defence position was that admissibility is conditional upon calling the author when contents are disputed.

JUDGEMENT

I. DECISION OF THE COURT

In the above case, **Justice Vimadalal, sitting as a Single Judge**, held that the document in question (**postcard – dated 22 August, 1958**) could not be admitted in the Court due to the reason that the author of the document was not called as a witness to substantiate its contents. Though the signature and handwriting on the document were duly proved by the plaintiff no. 2, it was ruled that mere proof of signature or handwriting does not establish the document's correctness and validity of its contents.

II. REFERRING TO AND EXAMINING THE PRECEDENTS

J. Vimadalal examined various judicial decisions on admissibility of documentary evidences. In the case of **Madholal Sindhu v. Asian Assurance Co. Ltd.**¹², **J. Bhagwati** held that a particular document cannot be admitted in Court to prove its contents unless the writer or signatory of that particular document is called and examined as a witness. According to this view, under **Section 67 of the Evidence Act, 1872**¹³, proof of handwriting only suffices to establish that a person has written or signed it, but does not prove the accuracy of contents of a document. He also looked into an unreported ruling of **Jiyajirao Cotton Mills v. Gill & Co.**¹⁴, in which **J. Coyajee** had a different thought. In that case, it was held that, even if the signatory or author is not called as a witness, the document may still be admitted in the Court once the signature or handwriting is proved. It was further reasoned that – the non-appearance of author would only affect the document's evidentiary weight and not its admissibility.

¹²Madholal Sindhu v. Asian Assurance Co. Ltd., (1945) 56 Bom. L.R. 147 (1945) (India).

¹³ Indian Evidence Act, 1872, § 67, No. 1, Acts of Parliament, 1872 (India).

¹⁴ Jiyajirao Cotton Mills v. Gill & Co., (1952) O.C.J. Suit No. 334 of 1951, decided by Coyajee J., on August 12, 1952 (Unrep.) (India).

III. DIFFERENCE IN JUDICIAL VIEW

Justice Vimadlal agreed with the judgement provided by Justice Coyajee and was of the opinion that once the document is duly proved, its contents should be admitted. The Court can determine the weight and reliability of the evidence at a later stage. However, he highlighted that in the case of **in the matter of Mr. D and Mr. S**¹⁵, the Division Bench of the Bombay High Court had agreed with the view taken in **Madholal Sindhu case**¹⁶ and held that the author of the document must be called as a witness to prove its contents.

IV. BINDING POWER OF PRECEDENT

As the decision of the Division Bench of same court stands binding upon him, Justice Vimadlal adhered to the precedent of **in the matter of Mr. D and Mr. S**¹⁷, and declined the admission of postcard as evidence, even when he was standing contrary to this decision. Hence, the argument raised by the defendants, in relation to the admissibility of the post card was sustained.

CRITICAL ANALYSIS

I. ISSUE OF THE CASE

The case of **Bhima Tima Dhotre v. The Pioneer Chemical Co.**¹⁸ raises an important and notable issue relating to the **admissibility** and **probative/evidentiary value** of documentary evidences under the Indian Evidence Act. The case as a whole revolves around a sole question that whether proving the signature or handwriting on the document is sufficient to admit it in court or whether the signatory or writer needs to be examined as a witness. Although the court rejected the admission of postcard as evidence, the reasoning provided by Justice Vimadlal showcases important critique of the approach adopted in the earlier precedents.

¹⁵ Mohammad Yusuf and Anr v. D and Anr., (1961) 68 Bom. L.R. 228 (1961) (India).

¹⁶ Madholal Sindhu v. Asian Assurance Co. Ltd., (1945) 56 Bom. L.R. 147 (1945) (India).

¹⁷ Mohammad Yusuf and Anr v. D and Anr., (1961) 68 Bom. L.R. 228 (1961) (India).

¹⁸ Bhima Tima Dhotre vs The Pioneer Chemical Co. (1968)70 BOM LR 683 (1968) (India).

II. DISTINCTION BETWEEN ADMISSIBILITY & DOCUMENTARY EVIDENCE

One of the most significant aspects of the case is the clear distinction shown between **admissibility** and **probative value** of evidence. J. Vimadalal stressed that once a document is duly proved by establishing the handwriting or signature, the document should be admissible in nature. However, the reliability should be assessed separately by the court. This distinction assists the court to consider the relevant documents without depending on the fact that everything written in the document is true. But, the decision of **Madholal Sindhu v. Asian Assurance Co. Ltd.**¹⁹, prevents the document from being admitted in court unless the author is called as witness, thereby blurring the distinction made between the above two.

III. PRACTICAL IMPORTANCE OF DOCUMENTARY EVIDENCE IN LEGAL PROCEEDINGS

J. Vimadalal asserted that persisting on examination of author or signatory of every document may undermine the value of documentary evidence. He remarked that – *“Documentary evidence becomes meaningless if the writer has to be called in every case to give oral evidence of its contents. If that were the position, it would mean that, in the ultimate analysis, all evidence must be oral and that oral evidence would virtually be the only kind of evidence recognised by law. That, however, is not the position under the Evidence Act.”*²⁰

There are many instances where documents are made several years before, and the authors may be unavailable due to reasons such as death, relocation or any other reasons. If courts rigidly insist upon the presence of the writer as a witness to prove the contents of the document, many relevant or significant documents may become irrelevant or unusable, thereby hindering the administration of justice. The reasoning of J. Vimadalal stands more practical for documentary evidences. He has also exhibited the limitations for putting oral evidence inherently above documentary evidence. He has rightfully asserted that – *“There is no guarantee of the truth of the contents of a document merely by reason of the proof of that document, but neither would there be any guarantee of the truth of oral evidence merely by reason of the fact that the deponent has stated the same on oath, and has subjected himself to cross-examination.”*²¹ J. Vimadalal

¹⁹ Madholal Sindhu v. Asian Assurance Co. Ltd., (1945) 56 Bom. L.R. 147 (1945) (India).

²⁰ Bhima Tima Dhotre vs The Pioneer Chemical Co. (1968)70 BOM LR 683, para 5 (1968) (India).

²¹ Bhima Tima Dhotre vs The Pioneer Chemical Co. (1968)70 BOM LR 683, para 7 (1968) (India).

referred to **Section 59, 61 and 62**²² of the Act and stated that law allows the contents of a document to be proved through documentary evidence itself.

IV. DOCTRINE OF JUDICIAL PRECEDENT

Though having a strong critique in views, the case also exhibits the significance of binding power of one court on another, thereby establishing **judicial discipline**. As a single judge of High Court, J. Vimadalal was bound by the decision of a Division Bench of the same High Court. Hence, even though he disagreed with the legal reasoning presented in the **Madholal Sindhu v. Asian Assurance Co. Ltd.**²³, he was compelled to follow the binding precedent & reject the admissibility of postcard. This signifies the hierarchical structure of courts and stability in justice system.

CONCLUSION

The case highlights the stress between judicial decision and binding power of the precedent. The judgement emphasizes on significance of judicial discipline and stability in legal system, even when the judge's view is contrary.

²² Indian Evidence Act, 1872, § 59, 61 & 62, No. 1, Acts of Parliament, 1872 (India).

²³ Madholal Sindhu v. Asian Assurance Co. Ltd., (1945) 56 Bom. L.R. 147 (1945) (India).