

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9221 OF 2014

Yusuf Khan Ahmed Khan

PETITIONER

VERSUS

Tabssum Yusuf Khan

RESPONDENT

Mr.G.V.Mohekar, Advocate for the petitioner.

Mr.A.V.Indrale Patil h/f Mr.S.P.Dhobale, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 23/02/2015

PER COURT :

1. The petitioner is the husband in RCS No.191/2011 and is therefore original defendant. Written statement has been filed by the petitioner at Exh.20 for opposing the suit. The petitioner has contended that the respondent has deserted him.

2. It is the case of the petitioner that there was a discussion between the plaintiff's wife and her father on cellular phone which has been recorded. A Court Commissioner was appointed to hear the said conversation and prepare the mono script of the conversation. The said report of the Court Commissioner is on record before the Trial Court.

3. After recording of entire evidence had been concluded, the petitioner moved an application dated 23/04/2014 Exh.89 praying for referring the said conversation reduced into a compact disk to the Forensic Laboratory so as to identify the voices of the plaintiff and her father, in the light of the denial by the plaintiff/wife.

4. By the impugned order dated 04/09/2014, application Exh.89 was rejected and the Trial Court declined to refer the Compact Disk to the Forensic Laboratory for verification of the voices appearing in the conversation. The grievance of the petitioner is that his case rests upon the contention that his father-in-law had instigated the respondent/wife to desert him. Conversation appearing in the C.D. would identify the confession or statement allegedly made by the plaintiff/wife and this would support the case of the petitioner.

5. He further submits on instructions that since the entire recording of evidence is over, the petitioner does not desire to lead any further evidence and would rely purely on the report of the Forensic Laboratory as regards the voice identification. So far as the mono script is concerned, he submits that the same is already on record and the report of the Court Commissioner in the light of the report of the Forensic Laboratory would be sufficient evidence before

the Trial Court.

6. Mr.Patil, learned Advocate alongwith learned Advocate Mr.S.P. Dhobale submits that he has appeared suo-motu on behalf of the sole respondent. He has vehemently opposed the petition on the ground that after the entire recording of evidence was over and the matter was posted for final arguments, application Exh.89 has been moved only to tire out the respondent.

7. Mr.Patil further submits that the petitioner has dragged the respondent in litigation before this Court on two occasions and this is the third occasion. Initially, the petitioner was before this Court challenging the territorial jurisdiction of the Trial Court dealing with RCS No.191/2011. In the second round before this Court, the petitioner had taken up a ground that some criminal case was pending and as such RCS No.191/2011 be stayed. On both the occasions, the petitioner had suffered dismissal of his petitions.

8. The respondent further submits that the petitioner has deliberately delayed the filing of application Exh.89 despite the fact that the mono script was filed with the Trial Court by the Court Commissioner in December 2013 and thereafter, the recording of

evidence was concluded. Application Exh.89 does not indicate the circumstances which could have prevented the petitioner in filing the application before conclusion of recording of evidence. It indicates that the petitioner is delaying the matter so as to tire out the respondent.

9. Having considered the submissions of the learned Advocates and having gone through the petition paper book, it appears that the petitioner could have preferred application Exh.89 immediately after the respondent denied the Court Commissioner's report containing the mono script. It is not in dispute that the respondent/ plaintiff had denied the report and her alleged conversation on 10/12/2013, whereas the application Exh.89 was filed on 23/04/2014.

10. I find that since the Court had earlier ordered appointment of a Court Commissioner, who has submitted the mono-script by way of a report, it would be futile to have the report on record, which is admitted by the petitioner and denied by the respondent, without identifying the voices in the said conversation. If the said voices are identified, I find that the Trial Court would be assisted in dealing with the main issue.

11. It cannot be expected of a Court to hear the conversation and identify the voices appearing in the conversation since the Court is not expected to have the expertise and knowledge of identifying voices appearing in conversations. The report of the Forensic Laboratory could therefore render this assistance to the Court.

12. Nevertheless, the respondent deserves to be compensated for the delay caused by the petitioner, who is a Scrap Merchant, in preferring application Exh.89. Ends of justice would be met by allowing this petition and by directing the petitioner to pay costs to the respondent.

13. In the light of the above, this petition is allowed. The impugned order dated 04/09/2014 is quashed and set aside and application Exh.89 is allowed with the following directions :-

- (a) The Trial Court shall urgently issue necessary orders preferably within a period of 3 (three) weeks from today for referring the compact disk to the Forensic Laboratory.
- (b) The respondent and her father herein shall co-operate with the Trial Court by giving their voice samples as per the directions, as may be issued by the Trial Court or the concerned Forensic Laboratory.

- (c) The Trial Court shall order the Forensic Laboratory concerned to submit its report as expeditiously as possible and within a period of 8 (eight) weeks from the date of receipt of the Compact Disk and the voice samples.
- (d) The Trial Court, upon receipt of the report from the Forensic Laboratory concerned, shall ensure that the litigating parties receive a copy of the report and thereafter shall hear final oral submissions of the litigating sides.
- (e) Both the parties submit that the Forensic Laboratory Report will have to be proved before the Trial Court in accordance with Law and therefore the parties would examine / cross-examine the author of the report.
- (f) Statement of the petitioner and respondent is recorded that they do not desire to lead any further evidence after the submission of the report by the Forensic Laboratory and they shall rely on the said report as well as the mono script filed by the Court Commissioner in support of their case.
- (g) The Trial Court shall decide RCS No.191/2011 within a period of 4 (four) weeks after the litigating sides conclude their oral submissions. Needless to state, RCS No.191/2011 shall be decided by the Trial Court on or before the 31/10/2015.

- (h) Since both the litigating sides have assured co-operation to the Trial Court, any attempt to adjourn the matter before the Trial Court on a frivolous or unreasonable cause, shall be rejected by the Trial Court and which shall, if need arises, impose costs on the party seeking such adjournment.
- (i) The petitioner shall deposit an amount of Rs.25,000/- (Rs. Twenty five thousand only) with the Trial Court on or before 10/03/2015 as costs awarded to the respondent, who shall withdraw the same without conditions from the Trial Court.
- (j) In the event of failure on the part of the petitioner to deposit the costs as directed, would result in the recalling of this order and in such an eventuality, the impugned order dated 04/09/2014 below Exh.89 shall stand restored.
- (k) The petitioner shall bear the costs of the Forensic Laboratory and which he shall deposit as per the directions of the Trial Court.

(RAVINDRA V. GHUGE, J.)