

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (STAMP) NO. 5136 OF 2015

Anil D. Jadhav & Ors.	..	Petitioners
VS.		
Hazarat Khwaja Sheikh Salluddin Chisti Nijam & Ors.	..	Respondents

Mr. R. S. Apte – Senior Advocate with Mr. Yuvraj Narwankar for
Petitioners.

Mr. A. P. Desai with Ms V. L. Maindal for Respondent Nos. 2 to 6.

Mr. S. D. Rayrikar – AGP for Respondent No. 8.

Mr. H. K. Sayyed for Respondent Nos. 14 to 17.

CORAM : M. S. SONAK, J.
DATE: 18 MARCH 2015

P.C. :-

1] This petition questions the order dated 4 February 2015 made by the 7th Jt. Civil Judge, Senior Division, Pune, which has the effect of recalling the witness summons issued to Professor Shrikant Jadhav of ASI submitted by the Joint Secretary, Deccan College Post Graduate & Research Institute, Pune (said report).

2] The learned Senior Advocate for the petitioners submitted that earlier applications and orders thereon were in the context of summons to produce the said report. The learned Senior Advocate submitted that there is a difference between issuance of summons for production of document and issuance of summons to a witness

to prove the contents thereof. The impugned order, according to the learned Senior Advocate, has been made, without appreciating such difference.

3] By application dated 19 March 2014, the petitioners applied for witness summons for production of the document (Exhibit 173). By order dated 22 April 2014, the application was rejected. Thereafter, by yet another application dated 14 July 2014 (Exhibit 181), the petitioners made the following averments in paragraph 2 :

“2) These Plaintiffs state that, it is extremely important to summon Prof. Vasant Shinde, field 'Archaeologist and Joint Director from Deccan College, Pune to submit the copy of the report on record and to depose in this Hon'ble Court pertaining to the report submitted by him after visit to the suit property'. The examination of the said witness is absolutely important in adjudicating this matter on merits. As such the summons deserve to be issued to the following witness to produce on record the report submitted by him to the Government and depose in this matter as the witness of these plaintiffs in respect of the contents of the said report.”

[Emphasis supplied]

4] In the application at Exhibit 181, the petitioners made the following prayer:

“a) Summons may kindly be issued and served upon Prof. Vasant Shinde, the Joint Director and Field Archaeologist, Deccan College, Pune – 6, calling upon him

to produce on record the copy of the report submitted to the Government in respect of the suit site and further to depose before this Hon'ble Court in respect of the same".

[Emphasis supplied]

5] By order dated 31 July 2014, the application, below Exhibit 181 was rejected. As against such rejection, the petitioners instituted a writ petition stamp no. 22136 of 2014. In the context of Exhibit 181, this Court in its order dated 16 September 2014 held as follows :

"7) In so far as the report prepared under the aegis of Archaeological Survey of India is concerned, the Trial Court has observed that the Petitioners original Plaintiffs can procure the said report by filing an application under the Right to Information Act and hence there is no warrant to direct the furnishing of the said report to the Petitioners original Plaintiffs or for issuance of witness summons to the authority who has prepared the said report. The order passed by the Trial Court therefore cannot be faulted with on the said ground. In that view of the matter, subject to the directions as contained in respect of furnishing of the report submitted by the Court Commissioner, the impugned order is sustained in so far as the other aspects are concerned."

6] From the aforesaid, it is clear that at least in so far as Exhibit 181 is concerned, the petitioners had applied for a witness summons, not just to seek production of the said report, but also to

require the witness summoned to depose to its contents. Such application, as noted earlier, was rejected on 31 July 2014 and such rejection was upheld by this Court in its order dated 16 September 2014.

7] In the light of the aforesaid orders, there is no warrant to interfere with the impugned order dated 4 February 2015. Petition is dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)

Chandka