

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3081 OF 2015

Shivprakash Yagya Narayan Tiwari .. Petitioner
vs.
Kailash Narayan Laxminarayan Tripathi .. Respondent

Mr. R. D. Soni i/b. Ram & Co. for Petitioner.
Mr. Rahul Singh for Respondent.

CORAM : M. S. SONAK, J.
DATE: 20 APRIL 2015

P.C. :-

1] Rule. With the consent of and at the request of the learned counsels for the parties, Rule is made returnable forthwith.

2] This petition questions the order dated 2 March 2015 made by the Civil Judge, Senior Division, Thane, rejecting the petitioner's application for examining an handwriting expert. The impugned order, reads thus :

“Read appln. and say. Heard parties. It appears from record that report of handwriting expert is already on record with regard to disputed signature. Considering all the facts on record application is liable to be rejected. Hence, order. Application stands rejected.”

3] The learned counsel for the respondent – plaintiff submits that in a previous suit instituted by the petitioner, handwriting expert was examined in respect of the document at Exhibit '63'. The report of

such handwriting expert, is substantially against the petitioner. The petitioner's suit, has since been dismissed. In such circumstances, the petitioner cannot insist upon issuance of witness summons to yet another handwriting expert.

4] In my judgment, the petitioner, who is the defendant in the present suit, is entitled to examine witnesses in support of his case. This would include examination of an handwriting expert as well. The circumstance that handwriting expert had been appointed in the other suit, is not a circumstance sufficient to deny the petitioner leave to examine yet another handwriting expert. Undoubtedly, it will be open to the respondent to confront such handwriting expert, with the report of the previous handwriting expert, appointed at the behest of the petitioner itself.

5] The learned counsel for the petitioner submits that he will not insist upon issuance of any witness summons as long as the petitioner is permitted to examine some other handwriting expert.

6] In view of the aforesaid, the impugned order is set aside. On or before 24 April 2015, the learned Civil Judge to permit the petitioner's handwriting expert Dr. Shailesh S. Chandajkar to take photograph of Exhibit '63' and Exhibit '32'. The handwriting expert, to make his report / file his affidavit in lieu of examination in chief

latest by 30 April 2015 along with copy thereof to the respondent / Advocate for the respondent.

7] The Civil Court, thereafter to fix an appropriate date for cross-examination of such expert witness.

8] By way of costs the petitioner to pay to the respondent a sum of Rs.2,000/-. Said amount to be deposited in the Court of the Civil Judge, Senior Division at Thane on or before 30 April 2015 and once deposited, the respondent shall be at liberty to withdraw the same unconditionally.

9] Considering that the suit is of the year 2008, the learned Civil Judge is directed to decide the same as expeditiously as possible and in any case within a period of six months from today.

10] Rule is made absolute to the aforesaid extent. There shall be no separate order as to costs in the present petition.

11] All parties to act on basis of an authenticated copy of this order.

(M. S. SONAK, J.)