

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5243 OF 2013

Niyaz Ahamad Sharifuddin Shaikh

.. Petitioner

vs.

Anis Ahamad Abdul Latif Don

(since deceased through his Lrs.

Smt. Razia w/o. Anis Hamed Don)

and anr.

.. Respondents

Mr. Niyaz Ahamad Sharifuddin Shaikh, Petitioner-in-person present.

CORAM : M. S. SONAK, J.

DATE : 10 JUNE 2015.

P.C. :-

1] Rule.

2] By order dated 8 June 2015, the parties have been put to notice that an endeavour shall be made to dispose of this petition finally at the stage of admission.

3] This petition challenges the order dated 3 March 2012 and 15 September 2012 below Exhibits-147 and 153 respectively, which have the effect of denying the petitioner leave to file an affidavit in lieu of examination for the purposes of proving and exhibiting the documents permitted to be brought on record by the Trial Court by its order dated 19 November 2011.

4] Mr. Niyaz Ahamad Sharifuddin Shaikh, the petitioner-in-person, contends that the Trial Court by its order dated 19 November 2011 has already permitted the petitioner to produce on record the following documents:

- (a) An extract from the personal diary;
- (b) Passport dated 12 March 1987;
- (c) Identity Card issued by Election Commission of India;
- (d) Letter-head dated 17 November 1994.

5] Mr. Niyaz Ahamad Sharifuddin Shaikh contends that by the applications at Exhibit-147 and 153, all that he desired was to prove the said documents, as otherwise, mere production unaccompanied by any proof, would be totally futile. Mr. Niyaz Ahamad Sharifuddin Shaikh conceded that his further prayers are that the respondents be directed to cross-examine him in the context of such documents was misconceived and stated that he does not press for any such relief, but would be satisfied if he is permitted to file an affidavit in lieu of evidence, only for the purposes of proving the aforesaid documents.

6] The learned Trial Court has made the impugned orders by observing that the evidence of both the parties is over and at this

stage, if liberty is granted to the petitioner as prayed for, the same will protract the proceedings which are of the year 1999.

7] The view taken by the Trial Court, would ordinarily, have to be sustained. However, in the present case, the Trial Court by its order dated 19 November 2011 has itself permitted the production of the aforesaid documents by observing that prejudice will occasion the petitioner, in case the same are not permitted to be produced. The documents like Passport and Election Commission Identity Card appear to be public documents. The same is, however, not the position with regard to the extract from the diary and the letter-head. Mere production will possibly not serve the purpose of the petitioner, whatever such purpose may be. No doubt, some delay is bound to occasion and that might prejudice the respondents to some extent. Such prejudice, however, can be compensated by way of costs, which the petitioner can be made to pay for lack of diligence on his part. In light of the order made on 19 November 2011 by the Trial Court, however, opportunity shall have to be granted to the petitioner to file affidavit in lieu of examination-in-chief/re-examination restricted ofcourse, to the proof of aforesaid documents only. Although, no directions can be issued to the respondents to

cross-examine the petitioner, opportunity for cross-examination shall have to be afforded to the respondents, if they so desire to avail the same.

8] Accordingly, the impugned orders are set aside. The learned Trial Court to permit the petitioner to file an affidavit in evidence, by way of examination-in-chief/ re-examination for the limited purpose of proving the aforesaid four documents. This shall be subject to petitioner paying the respondents costs of Rs.10,000/- (Rs. Ten Thousand only) within a period of two weeks from today. The petitioner, may either pay such costs directly to the respondents or deposit the same in the Trial Court within a period of two weeks from today. The Trial Court is directed to dispose of Regular Civil Suit No. 107 of 1999 within a period of three months from today considering that the matter relates to the year 1999. In case the costs are not paid/deposited by the petitioner, this petition shall be deemed to have been dismissed without any further reference to this Court. However, directions for disposal of the suit within three months from today shall remain.

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

10] All concerned to act upon an authenticated copy of this order.

11] The petitioner is directed to appear before the learned Trial Court on 29 June 2015 at 3.00 p.m. and produce the authenticated copy of this order.

12] Accordingly, Writ Petition is disposed of

(M. S. SONAK, J.)

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