

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2121OF 2015

Shri Vanyabapu Dagdu False ...Petitioner

versus

Shri Raosaheb Sitaram Nimse ...Respondent

.....
Mr. V.V. Tarde, advocate for the petitioner
Mr. R.R. Karpe, advocate for respondent
.....

CORAM : V. K. JADHAV, J.

**Date of Reserving
the Order : 21.01.2016**

**Date of pronouncing
the Order: 28.01.2016**

ORDER:-

1. By consent of learned counsel for the parties, heard finally.
2. By this petition, the petitioner-original plaintiff is challenging legality and validity of order dated 6.1.2015, passed by the learned Civil Judge, Junior Division, Rahuri, District Ahmednagar below Exh.59 in R.C.S. No. 192 of 2008, thereby rejecting the application for sending the document to handwriting expert.
3. Learned counsel for the petitioner submits that one Anjabapu

Karpe sold an electric pump set to the petitioner-plaintiff and respondent-defendant jointly and also issued receipt to that effect. However, said Anjabapu Karpe has denied issuing of said receipt in his cross examination. It is therefore, necessary to send the said receipt for opinion of handwriting expert. Learned counsel submits that the trial court has rejected said application Exh.59 solely on the ground that the application was moved at the fag end of trial of the suit. Learned counsel submits that issue is framed to the effect that whether the plaintiff proves that sub-mercible pump was purchased jointly by his relatives Shantabai Vishwanath Shinde and the respondent-defendant. In view of this, it is for the petitioner-plaintiff to prove the same. Learned counsel submits that no time limit could be fixed for filing application for sending disputed signature/writing to handwriting expert for comparison or opinion. Learned counsel submits that the trial court has erroneously rejected the said application Exh.59.

Learned counsel for the petitioner places reliance on the judgment in the case of ***M/s. Janachaitanya Housing Ltd. Ameerpet vs. M/s. Divya Financiers, reported in AIR 2008 AP 163.***

4. Learned counsel for the respondent submits that the evidence

of both sides is already over and the suit is pending for final arguments. The learned counsel for respondent-defendant submits that in respect of evidence as to the handwriting is not substantial evidence. Learned counsel submits that the trial court has rightly rejected application Exh.59. There is no substance in the writ petition and the writ petition is liable to be dismissed. Learned counsel places reliance on following two judgments viz. (i) ***Shashi Kumar Banerjee and ors. vs. Subodh Kumar Banerjee and others, reported in AIR 1964 SC 529*** and (ii) ***Bhagwan Kaur vs. Shri Maharaj Krishan Sharma and others, reported in AIR 1973 SC 136***.

5. In the case of ***M/s. Janachaitanya Housing Ltd. (supra)*** relied upon by the learned counsel for the petitioner, the Andhra Pradesh High Court has taken a view that no time could be fixed for filing application for sending the disputed signature or writing to handwriting expert for comparison or opinion. In para 16 of the said judgment, the Court has made following observations:-

“16. For the reasons aforementioned, we answer the reference thus : “No time could be fixed for filing applications under Section 45 of the Indian Evidence Act for sending the disputed signature or writing to the handwriting expert for comparisons and opinion and same shall be left open to the

discretion of the court; for exercising such discretion when exigencies so demand, depending upon the facts and circumstances of the each case."

6. In the case in hand, the issue is framed to the effect that whether the plaintiff has any *locus-standi* to file suit for deceased Shantabai Vishwanath Shinde. As per the pleadings of the petitioner-plaintiff, the sub-mercible pump was purchased jointly by his relative Shantabai and the respondent-defendant. The locus of the petitioner-plaintiff to institute suit for said Shantabai is under challenge. Even though the witness on the alleged receipt has denied his signature and also execution of the said receipt, no suggestion was given to the witness. Furthermore, even though the evidence of said witness Anjabapu was completed in the year 2013, the application was filed belatedly in the year 2014. Even no steps have been taken by the petitioner-plaintiff to examine the attesting witness of the said receipt. On the other hand, the petitioner-plaintiff has closed his evidence by filing pursis on 6.1.2014. The petitioner-plaintiff has filed an application Exh.59 only after the suit is posted for final arguments. The learned Judge of the trial court considering the facts and circumstances of the case, refused to exercise the discretion for sending disputed signature of the witness to the handwriting expert for comparison. Thus, the impugned order calls

for no interference. There is no merit in the writ petition and thus, the writ petition is hereby dismissed. In the circumstances, there shall be no order as to costs.

(V. K. JADHAV, J.)

rlj/