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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION***

WRIT PETITION NO. 5978 OF 2012

M/s. Precision Forging & Stamping & Anr. ...Petitioners.

V/s.

Mr. Rajendra Bhagchand Chhajed & Ors. ...Respondents.

Mr. S.S. Kanetkar a/w. V.H. Narvekar for the Petitioners.

Mr. Shriram Kulkarni for Respondent 1.

CORAM : N.M. Jamdar, J.

14 September, 2016.

Oral Order :-

By this Petition the Petitioners challenge the orders passed by the learned Civil Judge, Senior Division, Nasik dated 10 January 2012 and 3 May 2012 below Exhibits 78, 88 and 107 in Special Civil Suit No. 574 of 2008.

2. The Respondent – Plaintiff has filed a Special Civil Suit No. 574 of 2008 seeking specific performance of an alleged oral agreement entered into between the parties. In this suit an application was moved by the Respondent – Plaintiff for

appointment of a Court Commissioner for hearing the alleged recording upon which the Respondent – Plaintiff seeks to rely upon. An application was also taken out by the Petitioners opposing such production. The learned Civil Judge by the order dated 19 October 2011 directed the Respondent – Plaintiff to produce the original CD, cassette and tape-recorder. Thereafter, by order dated 10 January 2012, the learned Civil Judge directed the Assistant Superintendent of the Court to hear the recording in presence of the Plaintiff and Defendant Nos.1 and 2 or in presence of their Advocates to verify and tally the transcription with the recording. The learned Civil Judge clarified that the admissibility would be considered subsequently. Since the officer so designated could not perform the task, the learned Civil Judge directed an Advocate be appointed instead of the officer by order dated 3 May 2012.

3. The learned Counsel for the Petitioners raised several objections regarding the said tape-recording. He submitted that the production of the recording is contrary to the Rules framed by this Court titled Rules for Production for Recording of Tape Recorder and Evidence in Court, which have been framed under Article 227 of the Constitution of India.

4. In my opinion, it is not necessary to go into the merits of the rival contentions as regard the admissibility of the alleged

recording. The orders that have been impugned are procedural orders. All that the learned Judge has directed is that the recording be heard by an officer of the Court/Advocate who will compare with the transcript. In the impugned order itself the learned Judge has kept the merit of the rival contentions regarding this tape-recording open to be considered. Therefore, at this stage it is not necessary to decide the merits of the contentions, as such adjudication has not yet taken place before the learned Civil Judge. It is not necessary to preempt the adjudication by passing any order in this Writ Petition. As regard the appointment of an advocate is concerned, the learned Counsel for the Petitioners submitted that he has an objection to the Advocate appointed. The learned Civil Judge has recorded that when the Advocate was appointed, the Petitioners did not raise any objection. Be that as it may, to remove any doubt, the learned Civil Judge will either appoint an advocate by consensus between the parties or some other officer of the Court to perform the task indicated in order dated 10 January 2012.

4. All contentions of the parties as regard the recordings are kept open. As no further orders are required to be passed in the Writ Petition, the Writ Petition is disposed of. Registry to communicate the order to the learned Civil Judge at the earliest.

(N.M. Jamdar, J.)