

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

**WRIT PETITION NO.12522 OF 2015**

- |    |                                       |   |                    |
|----|---------------------------------------|---|--------------------|
| 1] | Mr. Meghji B. Nishar,                 | ] |                    |
|    | an Adult of Mumbai, Indian Inhabitant | ] |                    |
|    | having his place of residence at :    | ] |                    |
|    | 153, Mody Street, Mumbai 400 001      | ] |                    |
|    |                                       | ] |                    |
| 2] | Mr. Naving B Nishar,                  | ] |                    |
|    | an Adult of Mumbai, Indian Inhabitant | ] |                    |
|    | having his place of residence at :    | ] |                    |
|    | 153, Mody Street, Mumbai 400 001      | ] | ..... Petitioners. |

**Versus**

- |    |                                              |   |                   |
|----|----------------------------------------------|---|-------------------|
| 1] | Smt. Urmila Lakshmilal Pittie                | ] |                   |
|    |                                              | ] |                   |
| 2] | Shri Arvind Lakshmilal Pittie                | ] |                   |
|    |                                              | ] |                   |
|    | Both Adults, of Mumbai Indian Inhabitant     | ] |                   |
|    | having their office at :                     | ] |                   |
|    | 2 <sup>nd</sup> Floor, Raja Bahadur Mansion, | ] |                   |
|    | 20, Ambalal Doshi Marg, Fort,                | ] |                   |
|    | Mumbai 400 023                               | ] | ..... Respondents |
|    |                                              | ] |                   |
| 3] | M/s. London Eastern &                        | ] |                   |
|    | American Trading Co. Pvt. Ltd.               | ] |                   |
|    | Ground Floor, Raja Bahadur Mansion           | ] |                   |
|    | 22, Ambalal Doshi Marg, Fort,                | ] | Respondent No.3 - |
|    | Mumbai 400 023.                              | ] | Deleted.          |

**Mr. P S Dani, Senior Advocate, a/w Mr. Mikhail Behl a/w Mr. Nilesh Gala i/by Law Square for the Petitioners.**

**Mr. G S Godbole a/w Mr. Hitesh Patel i/by M.T.Miskita & Co. for the Respondent Nos.1 and 2.**

**Ms. Sneha G Sanap i/by Mr. S K Shinde, Government Pleader present.**

**CORAM : R. M. SAVANT, J.  
DATE : 08<sup>th</sup> February 2016**

**ORAL JUDGMENT**

1           At the outset the learned Senior Counsel appearing for the Petitioners seeks deletion of the Respondent No.3 from the array of the Respondents. The said Respondent No.3 is accordingly allowed to be deleted at the risk of the Petitioners. Amendment to be carried out forthwith.

2           Rule, with the consent of the learned counsel for the parties made returnable forthwith and heard.

3           The writ jurisdiction of this Court is invoked against the order dated 29/10/2015 passed by the learned Judge of the Small Causes Court, Mumbai by which order the Application (Exhibit 4) filed by the Defendant Nos.2 and 3 i.e. the Petitioners herein for the signature of the Defendant No.2 on the bailiff's report to be compared with the admitted signature came to be rejected.

4           It is not necessary to burden this order with unnecessary details. Suffice it would be to state that a decree has been passed against the Defendant Nos.2 and 3 after the suit came to be compromised with the Defendant No.1. It is the case of the Defendant Nos.2 and 3 that the suit summons were not served on them and that the signature of the Defendant

No.2 appearing on the bailiff's report as accepting the summons on behalf of the said Defendant as also the Defendant No.3 is a forged one. Since the decree was passed in the absence of the Defendant Nos.2 and 3, the said Defendants have filed an application for setting aside the ex-parte decree under Order IX Rule 13 of the Code of Civil Procedure. The said application for setting aside the ex-parte decree is numbered as Marji Application No.709 of 2014. It is in the said application that the instant application for referring the matter to the hand writing expert came to be filed by the Petitioners herein i.e. the Defendant Nos.2 and 3.

5           The said application was opposed to on behalf of the original Plaintiff and the ground taken was that the said application (Exhibit 4) has been filed 4 months after the original Marji Application was filed by the said Defendants. The Plaintiff also questioned the reasons as to why the reference was required to be made to the hand writing expert.

6           The Trial Court considered the said application and by the impugned order dated 29/10/2015 has rejected the same. The Trial Court has principally attributed two reasons for rejection of the said application. The first reason is that though the name of the Defendant No.2 appears as Meghraj in the cause title of the suit, the summons have been signed as Meghji which is the correct name of the Defendant No.2 and on the said basis draws an

inference that it could have been only the Defendant No.2 who could sign it or otherwise a person signing on behalf of the Defendant No.2 would have signed as Meghraj and not Meghji, the second reason on which the application has been rejected is that the Trial Court on comparison of the disputed signature as appearing on the suit summons with the admitted signature which is appearing on the Marji Application, has come to a conclusion that the signature is none else than that of the Defendant No.2 if compared with the admitted signature of the Defendant No.2 on the Marji Application. As indicated above, it is the said order dated 29/10/2015 which is taken exception to by way of the above Petition.

7           The learned counsel appearing on behalf of the parties would make submissions for and against the matter being referred to the hand writing expert for comparing the admitted signature of the Defendant No.2 with the disputed signature on the suit summons.

8           The issue therefore which arises for consideration is whether the appointment of an expert to submit a report is warranted. No doubt under Section 73 of the Evidence Act the Court has powers to compare hand writing or signature with the disputed signature but as held by the Apex Court in a catena of judgments that though there is no legal bar to the Judge using his own eyes to compare the disputed writing with the admitted writing, even

without the aid of the evidence of any handwriting expert, the Judge should, as a matter of prudence and caution, hesitate to base his finding solely on such comparison. The Apex Court therefore has issued a note of caution. The Trial Court in my view has without there being any hand writing expert's report on record erred in comparing the signature and then recording a finding as regards signature of the Defendant No.2. By doing the same, the Trial Court has virtually concluded the Defendant No.2 without a trial. In my view, the Trial Court has also erred in drawing an inference based on the fact that in the cause title the name of Meghraj appeared and the signature appeared as Meghji. The Trial Court was only concerned with the issue as to whether the hand writing expert was required to be appointed and therefore was not required to make any observation on merits of the case of the Defendant No.2.

9           In my view, therefore the impugned order dated 29/10/2015 is required to be quashed and set aside and is accordingly quashed and set aside. Resultantly the Application (Exhibit 4) is required to be allowed and is accordingly allowed. The learned counsel for the parties are agreeable to the matter being referred to the Chief State Examiner of Documents Shri R V Kakade for comparison of the signature of Defendant No.2 on the suit summons which is the disputed signature with the admitted signature of the Defendant No.2 on the Passport and the Pancard. It is made clear that the signature of the Defendant No.2 on the Marji Application would not be taken

into consideration. The Chief State Examiner of Documents to carry out the said exercise within 6 weeks from date. The Chief State Examiner of Documents is requested to expedite the process considering the fact that the proceedings are pending in the Small Causes Court, Mumbai. The expenses or charges of the Chief State Examiner of Documents would be borne by the Petitioners herein who would pay the same within one week of the receipt of the report. The above Writ Petition is accordingly allowed. Rule is accordingly made absolute in the aforesaid terms with parties to bear their respective costs of the Petition.

10           The office of the Government Pleader (Writ Cell) Appellate Side to forward a copy of this order to Shri R V Kakade, the Chief State Examiner of Documents immediately.

**[R.M.SAVANT, J]**