

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Writ Petition No.5987 of 2014
(Mrs. Nilofer wd/o Dr. Mohammad Abdul Saleem v. Mohd. Abdul Wahid
s/o late Dr. Mohammad Abdul Aziz and another)

Office Notes, Memoranda of Coram,
appearances, Court's orders or directions Court's or Judge's orders
and Registrar's order

Dr. R.S. Sundaram with Ms U.R. Tanna, Advocates for Petitioner.
Shri S.R. Deshpande with Shri Masood Shareef, Advocates for
Respondent No.1.

Coram : R.K. Deshpande, J.
Date : 6th December, 2016

The challenge in this petition is to the order dated 9-9-2014 passed below Exhibit 122 by the Trial Court in Special Civil Suit No.766 of 2012. The Trial Court has referred to the provisions of Sections 45 and 73 of the Evidence Act and Order XXVI, Rule 10-A of the Code of Civil Procedure. It is a matter of discretion to be exercised by the Trial Court as to the point of time when the matter is to be sent to the Hand-writing Expert. The Court has chosen to send the documents for examination by the Hand-writing Expert even before the plaintiff entered the witness-box.

During the pendency of this petition, the Trial Court was directed to proceed to conduct the evidence of the witnesses. The plaintiff has entered the witness-box and he has been

cross-examined. The defendant No.2, who is supporting the plaintiff, has also entered the witness-box, and has been cross-examined. Now it is the stage of the contesting defendant to enter the witness-box and lead evidence, if he so chooses. In such circumstances, if the document is now forwarded to the Hand-writing Expert for examination, there is no question of jurisdictional error.

This Court has already held that the Trial Court has not committed any jurisdictional error in sending the documents to the Hand-writing Expert, however, if there are other errors committed while passing the order, it shall be open for the parties to agitate this question in appeal.

With these observations, the petition is dismissed.

Judge.

Lanjewar