

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3320 OF 2017

RUKHSAR RAJU SHAIKH
VERSUS
SHAKEEL ALLABAX SHAIKH AND ANOTHER

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Advocate for Petitioner : Shri Korhalkar C. V.
Advocate for Respondents : Shri Shaikh Mazhar A. Jahagirdar

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CORAM : RAVINDRA V. GHUGE, J.
Dated: September 27, 2017

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PER COURT :-

1. The petitioner is aggrieved by the inter-locutory order dated 8.12.2016, passed by the appellate Court below Exhibit 23 in RCA No. 9 of 2016, by which, the said application has been rejected.

2. The petitioner is the original plaintiff, who had moved an application Exhibit 71 in RCS No. 40 of 2009, praying for the notarized document being sent to the CID (Crime Branch), Shivaji Nagar, Pune for an expert opinion about the truthfulness of the signatures appearing on the said document. Though the application was filed on 20.11.2010, without deciding the fate of the said application, the trial Court proceeded to deliver it's judgment on 7.3.2014. RCA No. 9 of 2016 was filed by the

petitioner and the thrust in the Appeal was that unless the document was referred to the handwriting expert, the ends of justice were not met by the trial Court while deciding the suit, keeping Exhibit 71 pending. The further argument of the plaintiff is that the trial Court should not have ventured into the exercise of comparing the signatures under Section 73 of the Indian Evidence Act instead of referring the document to the handwriting expert.

3. Application Exhibit 23 was filed by the petitioner / plaintiff praying for referring the said document to the handwriting expert. The appellate Court has rejected the said application on the ground that it would amount to permitting additional evidence being brought on record under Order XLI Rule 27 of the CPC.

4. It is trite law, in view of the judicial pronouncements of the Honourable Apex Court in the matter of Malayalam Plantations Ltd Versus State Of Kerala & Anr [(2010) 13 SCC 487], Union of India Versus Ibrahim Uddin and another [(2012) 8 SCC 148], and A. Andisamy Chettiar Versus A. Subburaj Chettiar [AIR 2016 SC 79], that an application under XLI Rule 27 is to be considered while deciding the appeal finally.

5. In the instant case, when the basis of the appeal seeking the quashing of the judgment of the trial Court is that Exhibit 71 was not decided and the notarized document was not referred to the handwriting expert, the appeal Court would be obliged to consider these aspects and grounds raised in appeal while deciding the appeal. The appeal cannot be segregated into portions so as to take up one part of the challenge prior to deciding the appeal itself.

6. The appellate court has observed in paragraph No.5 that whether the trial Court has erred in not sending the document to the handwriting expert and whether it has erred in applying Section 73 of the Indian Evidence Act by comparing the signatures by itself, would be decided while considering the appeal finally. In my view, the interest of the petitioner / plaintiff is safeguarded as the appellate Court would consider all the grounds and averments put forth in the appeal and would consider the prayer of the petitioner to quash the judgment of the trial Court, in the light of such grounds raised.

7. In view of the above, this petition need not be kept pending and stands disposed off. The appellate Court, however,

may note that while deciding the appeal on its own merits, in the light of the entire contentions of all the litigating sides, it would not be influenced by its observations made in the impugned order dated 8.12.2016.

(RAVINDRA V. GHUGE, J.)

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