

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

WRIT PETITION NO.3360 OF 2017

Smt. Surekha Vilas Khanekar

.... Petitioner
(Original Defendant)

versus

Ganesh Yamanaji Wadekar

... Respondent
(Original Plaintiff)

.....

- Mr.N. Wadikar, Advocate a/w. Mr. Mangesh Bansod, Advocate i/b. Law Loyals, Advocate for the Petitioner.
- Mr.P.G. Parkar, Advocate for the Respondent.

**CORAM : MRS.MRIDULA BHATKAR, J.
DATE : 29th MARCH, 2017.**

P.C. :

1. By consent the writ petition is decided at the stage of admission.

2. The petitioner is the defendant in original suit No.1991/11, who has presented the application with two documents i.e. Ex.10 and Article-1, which are taken on record, be sent for examination of opinion of handwriting expert regarding signatures, thumb impression thereon are by the

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deponent or not. The said application is rejected by the learned Judge by the order dated 06/03/2017. Hence this writ petition.

3. The learned counsel for the petitioner submits that he has moved this application on 15/04/2015. However, the learned trial Judge did not pass any order on the said application and kept that application pending by orally telling the defendant/petitioner that the said application would be decided after recording of the evidence. He further submitted that Ex.10 is an admitted document and produced by the plaintiff, wherein the thumb impression of the mother of the plaintiff is admitted. Article-1 is the document where the thumb impression of the mother is appearing. However, it is not exhibited.

4. The learned counsel further submitted that the learned Judge of the trial Court ought to have considered this application in his favour as the opinion of the handwriting expert in respect of thumb impression is required.

5. The learned counsel for the respondent i.e. the original plaintiff has submitted that the defendant has earlier also tried to protract the trial Judge by placing different applications. He relied on the order passed by this Court on 15/12/2016, wherein this Court has observed that the defendant failed to produce and examiner her further witness and her evidence was closed on 12/03/2015. She was given opportunity to lead evidence on 15/04/2015. However, again she failed to lead evidence till 28/09/2015 and again final opportunity was given to her to lead evidence on 28/09/2015. He further submitted that this Court has allowed the petitioner to examine only three witnesses. However, the learned trial Judge has allowed to examine four witnesses. He further pointed out that this Court has imposed cost of Rs.15,000/- on the defendant for not taking steps in time.

6. Perused the impugned order dated 06/03/2017. It is a suit filed for restoration of possession. The learned trial Judge

has discussed at length stages of recording of evidence and the nature of evidence which is brought on record by both the parties. Considering the reasons given in paragraph Nos.9 and 10 of the order, in respect of obtaining opinion of handwriting expert, I do not find any illegality in the order passed by the learned Judge of the City Civil Court. Hence, writ petition stands dismissed. The trial Court to proceed with the trial.

(MRIDULA BHATKAR, J.)