

Santosh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10828 OF 2017**

Gleeson Jude Miranda & Ors	...Petitioners
<i>Versus</i>	
Manuel Bosco Denzil Fernandes & Anr	...Respondents

Mr Sunil R More, *for the Petitioner.*
Mr JM D'Silva, *for the Respondents.*

CORAM: G.S. PATEL, J
DATED: 17th November 2017

PC:-

1. Heard Mr More and Mr D'Silva.

2. The Writ Petition is directed against an order dated 3rd March 2017 of the Appellate Bench of the Small Causes Court. The Appellants before that Court are the Petitioners here. They are the landlords of the property. They applied to take on record additional evidence. The suit was a declaratory suit filed by the present Respondents (tenants) to which the Petitioners (landlords) were the defendants. The application before the Appellate Court — and not before the Trial Court, and not before the decree was passed — was that additional evidence in the form of an opinion of a handwriting expert be taken on record. The application was ostensibly made under Order 41 Rule 37 of the Code of Civil Procedure 1908.

3. It was never shown why this material could not, with due diligence, as Mr D'Silva for the present Respondent points out, have been produced earlier when a dispute about handwriting or signature was in fact raised in the written statement, and was, therefore, squarely before the Trial Court. The expert's report is dated 1st March 2016. The Trial Court's decree is of 30th July 2015. In another words, the so-called evidence that was essential and that is today said to go "to the root of the matter" was obtained a good 10 months after the decree. If indeed it goes to the root of the matter, it is something that should have been placed before the Trial Court in the first place. The Appeal Court noted that in the written statement there were disputes raised about a signature being forged. Clearly, even before parties went to trial, i.e., from the time of the pleadings onwards there was a dispute about the validity and authenticity of this signature. The Defendants took no steps to address this aspect of the matter and there is simply no explanation whatsoever why this report could not have been obtained earlier. The application itself is at page 92, Exhibit "H". All it says is that the copy of the handwriting expert's report taken on file before the Appeal Court. There is not a whisper and explanation about it, and it is only now sought to be argued across the bar that the Defendants (the present Petitioners) were wrongly advised. As usual, and as has now become exceedingly fashionable, reliance is placed on the principle that a litigant should not suffer for the fault of his or her advocate. That is generally true, but before this can be invoked like some magic catch-all mantra, it must be shown that the advocate was at fault in the first place. Nothing of the kind has been done.

4. There is no infirmity in the impugned order.

5. The Writ Petition is rejected. No costs.

(G. S. PATEL, J.)