

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.2522 OF 2017

IN

WRIT PETITION NO.6258 OF 2017

WITH

WRIT PETITION NO.6259 OF 2017

Raishi Shivji Chheda (since deceased)

through LRs

... Applicants

v/s

Dhirajlal Raishi Chheda and others

... Respondents

Mr Yahaya Ghoghari i/b Mr Jatin Sheth for Applicants.

Mr Hiralal Thakkar, Sr. Counsel with Mr V.Y. Sanglikar, Mr Nachiket Jaywant and Mr Dipen Furia i/b M/s Shah and Furia Associates for Respodent No.1.

CORAM : B.P. COLABAWALLA, J.

DATE : NOVEMBER 27, 2017

P.C.:

1. This Civil Application has been filed seeking a modification of the order passed by me on 27th June 2017 in both the above Writ Petitions. This matter has a slightly checkered history.

2. Originally, these Writ Petitions were filed challenging two

separate orders, both dated 25th October 2016 passed below Exhs.246 and 271. Exh.246 was the Application filed by the original Defendants' father (now deceased) seeking a direction for sending 33 rent receipts for analysis and verification to the Directorate of Forensic Science Laboratory, Kalina, Santacruz. Exh.271 was a similar Application with reference to 74 rent receipts. Both these applications were rejected by the Trial Court vide separate orders both dated 25th October 2016. These orders were challenged in the above Writ Petitions.

3. When these Writ Petitions had initially come up for admission, by an order dated 19th June 2017 I was of the opinion that looking to the facts of the case, arguable questions were raised and therefore rule was issued and made returnable after eight weeks from 19th June 2017. An interim order was also passed wherein pending the Writ Petitions, the Trial Court was directed not to proceed with L.E.Suit No.141/173 of 2008.

4. Thereafter, the matter was mentioned and placed on board on 27th June 2017. On this date (27th June 2017) the learned

counsel appearing on behalf of the original Plaintiffs in L.E. Suit No.141/173 of 2008 was agreeable to send all the rent receipts to the Forensic Science Laboratory, Kalina, Santacruz to determine / scrutinize the difference, if any, of the paper quality and ink used on the revenue stamp receipts from the period March 1987 to December 2000. Accordingly, in paragraph 4 of the order dated 27th June 2017 the aforesaid direction was given. It is in these circumstances that this Civil Application has been moved for modification / clarification of the order dated 27th June 2017 and more particularly paragraph 4 thereof.

5. Mr Ghoghari, learned counsel appearing on behalf of the Defendants (Petitioners herein), has brought to my attention that the directions in paragraph 4 of the order dated 27th June 2017 are ambiguous and needed to be clarified so that the Forensic laboratory is in a position to effectively carry out the directions passed by this Court. He submitted that though this Court had directed the Forensic Science Laboratory, Kalina, Santacruz to scrutinize the difference in the paper quality, this Court had forgotten and/or inadvertently left out that they ought to be compared inter se. Similarly, Mr Ghoghari

pointed out that the Forensic Laboratory was to scrutinize the difference in the ink used on the revenue stamp of the rent receipt but had omitted to indicate as to what it was to be compared with namely with the ink used in the hand written contents in body of the very same rent receipt. Mr Ghoghari submitted that these clarifications are necessary in the order to enable the Forensic Laboratory to effectively comply with the directions passed by this Court on 27th June 2017.

5. Mr Thacker , learned Senior Counsel appearing on behalf of the original Plaintiffs stated that without prejudice to all contentions and without admitting to any of the allegations and/or insinuations against the original Plaintiffs, the original Plaintiffs are agreeable to the clarification as suggested by Mr Ghoghari.

6. In view of this fair stand taken by Mr Thacker, the following order is passed :-

(A) It is clarified that all 107 rent receipts, which collectively form a subject matter of these two Writ Petitions, are directed to be sent to the Directorate of Forensic Science Laboratory,

Kalina, Santacruz to scrutinize the difference in paper quality inter se the 107 rent receipts, if any, and also the difference in the ink used on the revenue stamp of the rent receipt and the hand-written contents in the body of the very same rent receipt.

(B) The Forensic Science Laboratory, Kalina, Santacruz is requested to complete this exercise within a period of four weeks from the date this order is communicated to it and thereafter file a verification report in the Trial Court in a sealed cover. The charges for the aforesaid exercise / verification shall be borne by the original Defendants viz. Petitioners herein.

(C) It is clarified that this order is passed without prejudice to all the contentions and without admitting any allegations and/or insinuations against the original Plaintiffs. It is further made clear that the Forensic Laboratory shall carry out this exercise as indicated above without being influenced by any observations of this Court either in this order or earlier orders which are only prima facie in nature.

(D) All contentions with reference to the said report of the Forensic Laboratory, Kalina, Santacruz are expressly kept open.

(E) The Civil Application is accordingly disposed off. No order as to costs.

(B.P. COLABAWALLA, J.)