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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY & INTESTATE JURISDICTION

NOTICE OF MOTION NO.140 OF 2017
IN
TESTAMENTARY SUIT NO.60 OF 2003
IN
TESTAMENTARY PETITION NO.571 OF 2003

Kusum N. Harsora

...Applicant /
...Deft. No.4

IN THE MATTER BETWEEN :

Pradeep Narottam

...Plaintiff

V/s.

Vijay N. Harsora & Ors.

...Defendants

Ms.Deepti Panda with Ms.Sharmika Patel i/b M/s.Purnanand & Co.
for the Plaintiff.

Ms.V.V. Thorat with Ms.Pratibha Shelake for the Defendant No.4.

Mr.Rahul Karnik for the Defendant No.3 in TS No.60 of 2003.

CORAM : R.D. DHANUKA, J.
DATE : 24TH JULY, 2017.

P.C. :-

1. By this notice of motion, the applicant (original defendant no.4) seeks permission to allow the defendant no.4 – Handwriting Expert – Mr.Milind Rajore to take inspection and photographs of four documents described in prayer clause (a) of the notice of motion and to submit a fresh report within two weeks on those documents

pertaining to the signatures of the deceased allegedly appearing on those documents.

2. Ms.Thorat, learned counsel appearing for the applicant submits that the alleged Will is forged and fabricated. The defendant no.4 has disputed the signature of the deceased on the alleged Will. To prove her case, the defendant no.4 had proposed to examine an Handwriting Expert. The said Handwriting Expert however had though inspected and photographed the original of the alleged Will, could not remain present, as he was ill. He submits that another Handwriting Expert – Mr.Anil Kumar Mathur, who was sought to be examined by the defendant no.4, could not remain present for the purpose of cross-examination. The defendant no.4 has thus examined the third Handwriting Expert – Mr.Milind Rajore. He has already submitted his report based on the photocopy of the alleged Will. His examination in chief has started.

3. At this stage, the defendant no.4 seeks permission of this Court to permit the defendant no.4 and the Handwriting Expert to take inspection of various documents. Insofar as the alleged original Will dated 1st October, 1999 is concerned, the said document is produced by the plaintiff and his witnesses and has been already marked as exhibit. The other three documents described in serial nos.(ii) to (iv) of prayer clause (a) of the notice of motion are already marked as

exhibits. Insofar as the consideration of payment to Dr.P.M. Dalal is concerned, the same is already marked as Exhibit Y-2.

4. Ms.Thorat, learned counsel for the applicant submits that since the Will is seriously disputed and other two Handwriting Experts who were examined by the defendant no.4 did not remain present for the purpose of evidence, Mr.Milind Rajore will be the only Handwriting Expert whose evidence would be required to prove the case of the applicant that the Will of the deceased was forged. She submits that the cross-examination of the Handwriting Expert has not commenced.

5. Learned counsel placed reliance on Order 26 Rule 10-A of the Code of Civil Procedure and would submit that in the interest of justice and in view of the fact that the signature of the alleged testator is disputed, the Handwriting Expert be permitted to take inspection of the alleged original Will including the photographs thereof and be permitted to submit an additional report.

6. Ms.Panda, learned counsel appearing for the plaintiff on the other hand submits that the plaintiff has already closed his evidence. The examination in chief of the Handwriting Expert proposed to be examined by the defendant no.4 has already commenced. The defendant no.4 cannot be allowed to improve her case at this stage. It is submitted that in the event by this Court

permitting the witness proposed to be examined by the defendant no.4 to take inspection of the original Will and also photograph thereof, the plaintiff be permitted to lead evidence in rebuttal.

7. It is not in dispute that the earlier two Handwriting Experts proposed to be examined by the defendant no.4 could not remain present for the purpose of evidence. The applicant is thus examining the Handwriting Expert – Mr.Milind Rajore to prove her case that the signature of the deceased on the alleged Will was forged and fabricated. It is not in dispute that the said witness Mr.Milind Rajore had submitted a report based on the photocopy of the alleged Will dated 1st October, 1999. It is not in dispute that the examination in chief of the witness is not concluded. The cross-examination of the witness has not commenced.

8. In my view, learned counsel for the applicant has rightly invoked the principles of the provisions of Order 26 Rule 10-A of the Code of Civil Procedure to buttress her submission that in the interest of justice the Handwriting Expert be permitted to take inspection of the alleged original Will and to take photograph thereof with a permission to submit an additional report of the Handwriting Expert. In my view since the examination in chief is not concluded, no prejudice would be caused to the plaintiff if the Handwriting Expert is permitted to take inspection of the alleged original Will and other

documents described at serial nos.(ii) to (iv) in prayer clause (a) of the notice of motion. The remaining three documents are already marked as exhibits. If any additional report of the Handwriting Expert is submitted by the said witness after taking physical inspection and photographs of the alleged original Will and the other documents, the plaintiff shall be entitled to cross-examine such witness also on the additional report of the Handwriting Expert as may be submitted by him.

9. I therefore, pass the following order :-

a). The notice of motion is made absolute in terms of prayer clauses (a) and (b). The said witness Mr.Milind Rajore is permitted to take physical inspection of the alleged original Will dated 1st October, 1999 and other three documents described at serial nos.(ii) to (iv) in prayer clause (a) of the notice of motion in the chamber of the Prothonotary & Senior Master of this Court along with the applicant. The plaintiff and his advocate can also remain present at the time of inspection. The witness is also allowed to take photographs of the said documents in presence of the parties and their advocates. The fees and expenses, if any, of the Handwriting Expert, including the Photographer shall be exclusively borne by the applicant.

b). The said witness is also permitted to file an additional report after taking inspection and photographs of the documents as

prayed. A copy of the said report shall be furnished to the plaintiff and other contesting parties, if any, within one week from the date of obtaining such report.

c). It is made clear that since the plaintiff has closed his evidence, the plaintiff shall be at liberty to lead oral evidence in rebuttal after the evidence of the applicant is closed. Since part of the examination in chief of this witness was recorded in Court, the balance part examination can be conducted in Court. However, insofar as cross-examination and evidence of the other witnesses, if any is concerned, the same can be conducted before the Court Commissioner appointed by this Court, who had recorded the evidence of other witnesses.

d). Place the testamentary suit on board for directions on 8th August, 2017. Place the Contempt Petition No.69 of 2016 on board for hearing and final disposal on 31st July, 2017.

e). The notice of motion is disposed of in aforesaid terms. No order as to costs.

(R.D. DHANUKA, J.)