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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9302 OF 2017

Shankar L. Tidke & Ors.	...Petitioners
V/s.	
Shivaji L. Bhandure	...Respondent

Mr.Shriram Kulkarni for the Petitioners.

Mr.Sandeep Shinde I/b Ergo Juris for the Respondent.

CORAM : R.D. DHANUKA, J.
DATE : 19TH SEPTEMBER, 2018.

P.C. :-

1. By this petition filed under under Article 227 of the Constitution of India, the petitioners have impugned the order dated 21st July, 2017 passed by the learned trial Judge rejecting the application filed by the petitioners (original defendants) to examine the document expert Mr.Prafulla Waman Kulkarni to prove the allegations made by the defendants in the written statement to the effect that some of the pages of a document in question had been tampered with and replaced by the plaintiff.

2. Learned Trial Judge has rejected the application filed by the petitioners on the ground that the petitioners have already examined one of the handwriting expert.

3. It is not in dispute that the evidence of the petitioners is still

not concluded. Mr.Kulkarni, learned counsel for the petitioners states that Mr.Prafulla Waman Kulkarni be permitted to take inspection of the original document lying in the custody of the learned Trial Court to enable him to submit a report, whether any of the pages of the original document are replaced and/or tampered with by any of the party and to submit his report on the issues raised by the petitioners in the application filed before the learned Trial Court, Exhibit – 158.

4. Learned Trial Judge is directed to permit Mr.Prafulla Waman Kulkarni to take inspection of the original document (Exhibit – 119) and to take photographs of the said document in presence of both the parties. The fees and expenses of the said Mr.Prafulla Waman Kulkarni shall be exclusively borne by the petitioners. The petitioners shall inform the plaintiff's advocate in advance about the visit of the said Mr.Prafulla Waman Kulkarni. After taking inspection of the said document, Exhibit – 119, the said Mr.Prafulla Waman Kulkarni shall submit a report within one week from the date of inspection and shall submit a report to the petitioners. A copy of the said report shall also be made available to the plaintiff's advocate simultaneously.

5. If the petitioners seek to examine the said Mr.Prafulla Waman Kulkarni as his witness, an affidavit of evidence shall be filed within two weeks from the date of submission of the report and a copy

thereof shall be furnished to the plaintiff's advocate. It is made clear that no further extension of time would be granted.

6. The impugned order dated 21st July, 2017 passed by the learned Trial Court is quashed and set aside. It is made clear that if the said Mr.Prafulla Waman Kulkarni is not agreeable to file affidavit of evidence and to act as a witness of the petitioners, the petitioners would be at liberty to apply for issuance of the witness summons upon the said Mr.Prafulla Waman Kulkarni. Learned Court Commissioner shall not seek any unnecessary extension of time.

7. The writ petition is accordingly disposed of in aforesaid terms. There shall be no order as to costs.

8. All the parties as well as the learned Trial Court and the learned Court Commissioner to act on the authenticated copy of this order.

Vasant
Anandrao
Idhol

Digitally signed by
Vasant Anandrao Idhol
Date: 2018.09.25
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(R.D. DHANUKA, J.)