

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION (ST) NO. 32561 OF 2018

WITH

WRIT PETITION (ST) NO. 32565 OF 2018

Shri. Rajmani Benimadhav Malviya (deceased) .. Petitioners
Through his legal heirs and representatives.

Versus

Smt. Ramdulari C. Mishra (deceased) .. Respondents
Through his legal heirs and representatives and Ors.

Mr. Dharendra D. Singh for the Petitioners in both Petitions.

Mr. E.K. Sasidharan, for Respondent Nos. 2(bb), 2(bc), 2(bd) 2(ca), 2(cb),
2(d), 2(e) and 2(f) in both Petitions.

CORAM : M.S. SONAK, J.

DATE : 19 NOVEMBER 2018.

ORAL JUDGMENT :-

1. Mr. Sasidharan, appears for Respondent Nos. 2 to 2(f) who are really the contesting Respondents.

2. Insofar as these Petitions are concerned, Respondent Nos. 2(a) to 2(f) are the original Plaintiffs in the suit in which the impugned orders have been made.

3. At the request of and with the consent of the learned Counsel for the aforesaid parties, Rule is issued and the same is also made returnable forthwith.

4. The challenge in Writ Petition (ST) No. 32561 of 2018 is to the order dated 23.10.2018 to the extent, the same does not order the exhibiting of letter dated 07.12.2009, but only marks the said letter as Y-11 for the purpose of identification.

5. The challenge in Writ Petition (ST) No. 32565 of 2018 is to the order dated 01.11.2018 by which the learned trial Judge has rejected the Petitioners application for issue of witness summons to the Superintendent of Post office, Mumbai, North west Division in the context of exhibiting the letter dated 07.12.2009.

6. Mr. D.D. Singh, the learned Counsel for the Petitioner in both the Petitions submits that in case Writ Petition (ST) No. 32565 of 2018 is allowed, then, the Petitioner will not press for any relief in Writ Petition (ST) No. 32565 of 2018.

7. Mr. D.D. Singh submits that in terms of order dated 15.10.2018 passed by this Court in Writ Petition No. 11392 of 2018, the learned trial Judge ought to have permitted the exhibiting letter dated 07.12.2009. He submits that the learned trial Court has taken a too technical view in the matter. In any case, he submits that since such exhibiting was denied on the ground that the petitioner was not the author of the letter dated 07.12.2009, learned trial Judge should have at least permitted the issuance of witness summons to the Superintendent of Post office, so that, letter dated 07.12.2009 could have been exhibited. He submits that the impugned orders are in violation of principles of natural justice and occasions very serious prejudice to the

Petitioner.

8. Mr. Sasidharan submits that in the first round of litigation, the Petitioner had in fact applied for a witness summons to the Superintendent of Post office, which request was denied by this Court in its order dated 15.10.2018. He points out that only re-examination was permitted in the context of the reply dated 31.07.2018 sent by the Postal Department along with the Postal packet Exhibit-189 and the letter dated 07.12.2009 issued by the Postal Department. Mr. Sasidharan, therefore, submits that there is absolutely no error in the two orders made by the learned trial Court and the same may therefore not be interfered with.

9. Rival contentions now fall for determination.

10. In Writ Petition No. 11392 of 2018, the Petitioner had challenged order dated 03.09.2018 by which the learned trial Judge had rejected Petitioners application at Exhibit-194 seeking following reliefs :-

- “a) That this Hon'ble Court may be pleased to allow permit D.W.1 for his re-examination and thereby order dt. 20.08.2018 of no reexamination be set aside;*
- b) In the alternate to prayer clause (a) this Hon'ble Court may be please to allow and permit C.A. of defendants no. 1 and 2 to produce original of document at Exhibit”A” hereto and the same may be marked exhibit in evidence;”*

11. The Writ Petition No. 11392 of 2018 was partly allowed by its judgment and order dated 15.10.2018. The relevant observations/

reliefs in paragraph 7 and 8 read as follows :-

“7. A perusal of the reply filed by the plaintiffs and in particular paragraph-7 thereof shows that the plaintiffs did not dispute the contentions raised in paragraph-1. Thus immediately after the cross-examination was over on 20.08.2018 oral permission was sought for re-examination of DW-1. The learned trial Judge directed defendants No.1 and 2 to take out written application which was taken out on the next day. A perusal of paragraph-4 of the impugned order shows that the learned trial Judge has also made reference to the information furnished under Right to Information Act. In such state of affairs, the learned trial Judge was not justified in declining to grant the prayer of defendants No.1 and 2 in terms of prayer clause (b) of the application.

8. In view thereof, the impugned order dated 3.9.2018 is set aside and the application Exhibit-194 is allowed in terms of prayer clause (b). By way of abundant caution it is made clear that re-examination of DW-1 is restricted only to the extent of the reply dated 31.07.2018 sent by the Postal Department along with postal packet Exhibit-189 as also the letter dated 07.12.2009 issued by the Postal Department. Rule is made absolute in aforesaid terms with no order as to costs.”

12. In paragraph 8 of the judgment and order dated 15.10.2018, this Court, while setting aside the impugned order dated 03.09.2018 had in fact allowed the Petitioners application at Exhibit-194 in terms of prayer clause (b). Prayer clause (b), as noted earlier, had sought for leave to produce the original document at Exhibit-A and the same may be marked as exhibit in evidence. There is no dispute that Exhibit-A referred to in prayer clause (b) was nothing but the letter dated 07.12.2009.

13. In view of the aforesaid, learned trial Court was obviously not justified in refusing the Petitioner's leave to produce the original of letter dated 07.12.2009 or marking the same as an exhibit in the evidence. Learned trial Judge, has however, taken the view that since the Petitioner was not the author of such letter nor was such letter addressed to the Petitioner, such letter cannot be permitted to be marked as exhibit in evidence.

14. If such technical view is to prevail, then, the learned trial Judge should have at least acceded to the Petitioner's request for issue of witness summons to the Superintendent of Motilal Nagar Post Office, so that, such witness could have deposed regards the letter dated 07.12.2009 so that it could be duly exhibited. The Superintendent could have also produced the necessary records since, one of the issue in the matter is whether the Motilal Nagar Post Office was established in the year 1996 as contended by the Respondents or whether the same was established in the year 1962 as contended by the Petitioners.

15. There was absolutely no justification for not issuing witness summons to the Superintendent of Post Office. In the order dated 15.10.2018, it is not as if the prayer for issuance of witness summons was specifically declined. In any case, such prayer may not have been granted simply because this Court had permitted the production of the letter in question and also directed that the same be marked as an exhibit.

16. Accordingly, the order dated 01.11.2018 made below Exhibit-215 is set aside. Accordingly, the application at Exhibit-215 is

allowed in the following terms :-

“It is therefore prayed that this Hon'ble Court may be pleased to issue Witness Summons to Post Master, Motilal Nagar, Goregaon (W), Mumbai-400 104 directing him to produce the record of date of establishment of Post office at Motilal Nagar, Goregaon (W) and to Identify the said letter dt. 07/12/2009 marked Article Y-11 and in that behalf copy of said letter dt. 07/12/2009 is also annexed herewith.”

17. Since, Rule is made absolute to the aforesaid extent in Writ Petition (ST) No. 32565 of 2018, there is no necessity to granting any further reliefs in Writ Petition (ST) No. 32561 of 2018.

18. Learned trial Court is directed to issue the witness summons expeditiously, since, this is a very old matter which is required to be disposed of expeditiously.

19. All concerned to act on basis of authenticated copy of this order.

(M.S. SONAK, J.)