

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

6 WRIT PETITION NO. 3528 OF 2019

DAGADU SHANKAR MISTRI
VERSUS
NEETA SURESH DETH

...
Advocate for Petitioner : Mr. Jadhavar Santosh S.

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CORAM : P.R. BORA, J.
DATED : 12th March, 2019.

PER COURT:-

. Not on board. Taken on board.

2. By filing the present petition, the order passed by the 3rd Joint Civil Judge, Senior Division, Ahmednagar on 11.01.2019 below application Exhibit-89 is challenged. The said application was filed by the present petitioner with a prayer that he may be permitted to adduce the oral evidence of one Prafulla Kulkarni, the Handwriting Expert. The said application has been rejected by the learned Civil Judge. It is not in dispute that before filing of the said application, the evidence of the plaintiff as well as the defendant was closed and the matter was posted for arguments. The learned Civil Judge while rejecting the application has assigned the reason in Para-5 of the said

order, which I deem it appropriate to reproduce as it is, which reads thus:

"5. It appears from the record of proceeding that sufficient chances were granted to the plaintiff for adducing his evidence. Though, it has been mentioned in the application that the report of Handwriting Expert was received in the month of July, 2018, however, it has been produced below list Exh.92, in the court on 04.01.2019. This conduct of plaintiff regarding production of report at belated stage shows the intention of plaintiff to prolong the matter. Moreover, the application dated 07.03.2013, was not sent through court to the Handwriting Expert. The plaintiff himself suo-motu sent that application towards Handwriting Expert and even its intimation was not given to the court by filing any pursis on record. So also, the plaintiff has filed to depose in his oral evidence that he has sent that application towards Handwriting Expert. The fact of sending the application towards Handwriting Expert was within the knowledge of plaintiff. The evidence of plaintiff has been closed. The defendant has also closed his evidence and the matter is posted for final argument. The issues were framed in the suit below Exh.14 on 08.10.2015. Since then the matter is pending by one or more reasons. It appears that the present application is filed by the plaintiff with an interior intention to prolong the matter. This is not the case of the plaintiff that the report which he wants to prove was lost or were not pressed. Therefore, the facts in the case law stated and case in hand, are different. Hence, case law Smt. Shantibai K. Vardhan (supra) is not applicable to the present case. It appears from the record and conduct of the plaintiff that the plaintiff has intentionally made delay to prove the alleged report on record. Therefore, case law M/s Cosmosteels Pvt. Ltd. (supra) is also not applicable to the case in hand".

3. Apparently, it does not appear to me that the Civil Judge has committed any error in rejecting the application filed by the present petitioner. The letter which the petitioner is alleging to have sent to the Handwriting Expert was the base for filing the civil suit by the present petitioner. According to the petitioner the said letter contains defamatory contents in respect of the petitioner. The fact of sending the said letter was specifically denied by the respondent-defendant. In the circumstances, at the first instance the attempt must have been made by the petitioner to file a proper application with a request to send the said document to the Handwriting Expert through the Court machinery by obtaining the admitted signatures of the defendant. The said exercise has not been done. It is further revealed that in his evidence, the petitioner has nowhere even whispered that he has forwarded the document to the private Handwriting Expert seeking his expert opinion on that. Nothing was also put to the witness examined by the defendant in his cross-examination as about the said letter.

4. In the circumstances, it does not appear to me that at such a late stage i.e. after closing of evidence from both the sides, the Civil Judge has committed any error in

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not accepting the request made by the present petitioner. The writ petition being devoid of any substance deserves to be dismissed and is accordingly dismissed.

(P.R. BORA, J.)

Mujaheed//