

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

WRIT PETITION NO.5139 OF 2019

1. Swag. Smita Patil Charitable
Trust Smit Nagar, Shivaji Nagar,
Dahiwad, Tal. Shirpur, Dist.Dhule
Through its Secretary
Mr.Ashok Babulal Agrawal
Age : 67 years, Occ : Secretary
& Business,
R/o As above.
2. The Head Master/Principal
Swag. Smita Patil Public School,
Smit Nagar, Shivaji Nagar,
Dahiwad, Tal. Shirpur,
Dist. Dhule.

..PETITIONERS

-VERSUS-

Vinod Nana Salunkhe
Age : 39 years, Occ : Nil,
R/o : Javkheda, Post. Varul,
Tal. Shirpur, Dist. Dhule

..RESPONDENT

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Mr.S.P. Brahme, Advocate for the petitioners.
Ms.Surekha Mahajan, Advocate for respondent.

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**CORAM: V.L. ACHLIYA,J.
DATE : 30.04.2019**

ORAL JUDGMENT:

Rule. Rule made returnable forthwith
and heard finally with the consent of the

parties.

2. By the present Petition filed under Article 227 of the Constitution of India, the petitioners have challenged the order dated 12th March, 2019, passed in Regular Civil Suit No. 90 of 2015 by the 2nd Joint Civil Judge, Junior Division, Shirpur. By the impugned order, learned Judge of the trial Court has rejected the application filed vide Exhibit-65 to refer the documents for the opinion of handwriting expert.

3. Mr.Brahme, learned counsel for the petitioners assail the impugned order with the contention that the observations made in the order that there is no specific pleading in the written statement in respect of documents to be referred for the opinion of handwriting expert and in absence of specific pleadings of fraud, forgery etc., the defendants cannot adduce the evidence is contrary to factual position. By inviting attention to the pleadings made in the written statement filed by petitioner the learned counsel submits that there is specific pleadings made in respect of fraud

and fabrication of documents by the plaintiff so as to file suit. In this background, learned counsel submits that the order passed is unsustainable in law.

4. On the other hand, Miss Surekha Mahajan, learned counsel for the respondents supported the order passed by the trial Court. By referring to the application made to refer the documents for opinion of handwriting expert, learned counsel pointed out in application there is reference to documents to be referred for the opinion of handwriting expert. Learned counsel further pointed out that during the course of hearing, the Court made specific query to petitioner-defendant as to which documents to be referred for opinion of handwriting expert. It is pointed out that none of the documents mentioned in para 9 of the order stated in response to query made by Court are referred as forged and fabricated documents in the pleadings made in written statement filed by the defendants. It is submitted that the application has been filed to refer the documents for the opinion of the handwriting expert only with a view to protract the

hearing of the case.

5. On due consideration of submissions advanced in the light of the pleadings in the application moved and the order passed, I am of the view that the application made by the petitioners to refer the documents for opinion of handwriting expert is vague and provides no particulars of the documents, which according to the defendants are forged and fabricated. If we consider the list of documents reflected in para 9 of the order passed by the trial Court, then there is no reference to those documents in the written statement filed by the defendants. The application filed to refer the documents for handwriting expert appears to be filed without requisite particulars, and more particularly, the particulars of the documents to be referred for opinion of the handwriting expert. However, perusal of the written statement and more particularly paras 20, 21 and 22 spell out that the petitioners-defendants have taken a plea of creation of false documents at the instance of the plaintiffs for the purpose of filing suit. In para 20, the petitioners have specifically

referred certain documents in the nature of correspondence as forged and fabricated documents. However, the said documents are not specifically mentioned in the application filed to refer the documents for the opinion of handwriting expert. During the course of hearing in response to query made by the Court, the reference is made to certain documents which are of the period 2003 to 2012, in respect of which there is no specific pleading in the written statement. It appears that the controversy arose on account of proper particulars in the application made for referring the documents for the opinion of handwriting expert. It is stated that the matter is at preliminary stage and the application for temporary injunction is pending for consideration and issues are yet to be settled. Therefore, in the facts and circumstances of the case, I am of the view that the impugned order deserves to be set aside and the liberty be granted to the petitioners to make proper application giving particulars of the documents with reasons to refer those documents for the opinion of handwriting expert.

6. So far as the submission advanced that the present application is filed with an oblique motive to protract the proceedings and more particularly, the defer the hearing of application filed for temporary injunction, I am of the view the concern expressed can be addressed by giving appropriate direction to trial Court to decide the application expeditiously. I therefore pass the following order :-

ORDER

(i) The impugned order dated 12th March, 2019 is set aside.

(ii) The petitioners - defendants are granted liberty to make fresh application providing particulars of the documents and justification for referring those documents for the opinion of handwriting expert.

(iii) In case, such application is made on or before 6th June, 2019 i.e. the date fixed before the trial Court, the trial Court is directed to decide the same as expeditiously as possible, and preferably within four weeks from filing of such application.

(iv) The trial Court is directed to expedite the hearing of the application for temporary injunction filed by the plaintiffs.

(v) Pendency of the application for referring documents for opinion of handwriting expert shall not be treated as impediment in deciding the application filed seeking temporary injunction.

(vi) The Writ Petition is disposed of in above terms. Rule made absolute accordingly.

[V.L. ACHLIYA]
JUDGE

SGA