

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9454 OF 2019

Arun Kondibarao Dapkekar,
Age 55 years, Occ. Business,
R/o Plot No.9, Agasti Colony,
N-9, Cidco, Aurangabad. ..Petitioner

Versus

1. Mohinder Babulalji Bakharia,
Age 40 years, Occ. Business,
R/o Bakharia Niwas,
Dhawni Mohalla,
Behind Appa Halwai Sweet,
Pandari Baug, Shahganj,
Aurangabad.

2. The Administrator,
City and Industrial Development
Corporation (CIDCO),
Near LIC Office, Cidco,
Aurangabad. ..Respondents

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Advocate for Petitioner : Shri Biradar R.D.
Advocate for Respondent 1 : Shri Kulkarni A.S.
Advocate for Respondent 2 : Shri Bajaj A.S.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: August 2, 2019
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ORAL JUDGMENT:-

1. Heard the learned counsel for the respective parties.
2. Rule.

3. By consent, Rule is made returnable forthwith and the petition is taken up for final hearing.

4. The petitioner / defendant in Special Civil Suit No. 364 of 2011 is aggrieved by the order dated 1.4.2019, passed by the trial Court, rejecting application Exhibit 160. The petitioner had prayed for referring the Agreement to Sell - Exhibit 62 and the Bharna Pavati - Exhibit 66, to a particular Laboratory for analyzing the age of the ink.

5. The contention of the petitioner is that he had signed on two blank non-judicial stamp paper, and had delivered these documents / papers, to the plaintiff, in 2008, as security. The plaintiff had misused the said documents by typing material on the said documents. The date appearing on the agreement is 12.1.2008 and on the Bharna Pavati as 7.6.2008. These documents were created in 2011. Therefore, analysis of the age of the ink would indicate as to the act of the plaintiff in preparing these documents in 2011.

6. The learned Advocate for the plaintiff has strenuously opposed the petition. He submits that the petitioner has filed application Exhibit 160 by way of an afterthought. The recording of oral evidence is concluded. The suit is 8 years old. He should have moved

the application before the framing of issues.

7. Shri Bajaj, learned Advocate appearing on behalf of Cidco submits that the technology to verify the age of ink, be it through any pen or by typing, can be assessed. Cidco is unconcerned with this issue between the parties.

8. I find that the petitioner has taken a specific stand in the written statement filed on 14.11.2011 that both these documents, which are on non-judicial stamp papers, were blank and were tendered to the plaintiff by way of a security in 2008. He had signed on blank non-judicial stamp papers and the plaintiff has got the material typed on the said two documents in 2010 or 2011 and has backdated the said documents.

9. It is apparent that the petitioner has been negligent. Had he moved Exhibit 160 early in the trial, the issue of delay and costs would not have arisen and the suit would not have been prolonged. Nevertheless, the fact remains that a litigant is to be given an opportunity to put forth his best evidence.

10. The Nutron Activation Analysis, BABC, Mumbai has the facility of analyzing such documents, so as to verify the age of the ink. The

petitioner will have to bear the entire costs of this exercise. He would also have to pay costs to the plaintiff as Exhibit 160 was filed at a belated stage.

11. In view of the above, the petition is partly allowed. The impugned order dated 1.4.2019 is quashed and set aside and application Exhibit 160 is allowed with the following directions:-

(A) The petitioner shall deposit an amount of Rs.10,000/- before the trial Court, on/or before 28.2.2019 as costs. The original plaintiff shall withdraw the said amount without conditions.

(B) The trial Court shall refer the documents at Exhibits 62 and 66 to the Neutron Activation Analysis, BABC, Mumbai, expeditiously.

(C) The petitioner shall deposit the entire amount required for such test analysis by approaching the said establishment at Mumbai. If the amount is not deposited on/or before 30.8.2019, this order shall stand recalled, this petition shall stand dismissed and the impugned order shall stand restored, without reference to the Court on 31.8.2019.

(D) The trial Court would request Neutron Activation Analysis, BABC, Mumbai to submit its report as expeditiously as possible and preferably on/or before 15.10.2019.

(E) None of the litigating sides shall dispute the report, which would be tendered by the concerned Laboratory to the trial Court and no further litigation shall be initiated to the extent of the said report.

(F) After the above exercise is concluded, the petitioner shall conclude the recording of his oral evidence expeditiously and shall refrain from seeking adjournments on unreasonable grounds.

12. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

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