

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9293 OF 2019

SUPRIYA AMAR PATIL
VERSUS
AMAR RAMRAO PATIL

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Advocate for Petitioner : Shri Thorat N.R. h/f Shri Kadlag G.B.
Advocate for Respondent : Shri Kakade N.K.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: July 30, 2019

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PER COURT :-

1. The petitioner is the original respondent / wife in PA No.223 of 2016. She is aggrieved by the order dated 22.5.2019 passed by the learned Principal Judge, Family Court, Aurangabad, vide which her application Exhibit 101 seeking issuance of witness summons to Dr. Juveriya Tanzeer Shaikh for being examined as a witness, has been rejected.

2. I have heard the strenuous submissions of the learned Advocates for the petitioner and the respondent, original applicant before the Family Court.

3. Issue is as regards proving a medical certificate dated 30.7.2016, signed by Dr. Shaikh, Resident Doctor. The petitioner was

directed to undergo certain tests in the Department of Gynecology, Government Medical College and Hospital, Aurangabad. The Unit Head of the Department is Dr. Varsha Deshmukh. The report is undisputedly signed by Dr. Shaikh after carrying out the investigation.

4. The petitioner had submitted her list of witnesses on 18.12.2017 before the Family Court and the name of Dr. Shaikh was mentioned at Sr. No.2. While recording her oral evidence, she has initially examined Dr. Sonali Deshpande in connection with the same report dated 30.7.2016. After the recording of the oral evidence of Dr. Deshpande was concluded, the petitioner moved an application dated 1.4.2019, Exhibit 101, seeking issuance of witness summons to Dr. Shaikh.

5. The contention of the learned Advocate for the respondent is that since Dr. Deshpande has already been examined, there is no necessity to examine another Doctor. Dr. Deshpande is senior to Dr. Shaikh. No suggestion was given to Dr. Deshpande as to whether Dr. Shaikh needs to be examined.

6. He relies upon the affidavit-in-reply filed on record to contend that once the Doctor has been examined, there is no necessity to

further examine another Doctor.

7. It requires no debate that the author of the report is normally to be examined for proving the contents of a document. It would be a deficiency in the evidence if it is finally concluded by the Court that the author of the document was not examined. The report clearly indicates at the center of the document that it was signed by Dr. Shaikh in her capacity as a Resident Doctor. Dr. Deshpande has not signed on the said report. In this backdrop, keeping in view that Dr. Shaikh has signed on the report as a Resident Doctor and since her name has already been proposed by the petitioner, through her list of documents, it would be appropriate to permit the petitioner to examine Doctor Shaikh.

8. The trial Court has observed that there is no relevancy of the testimony of Dr. Shaikh with the cause of action set out in the proceedings. It is well settled law that the Court should not venture into assessing the quality of evidence of a witness before permitting the recording of evidence. It also requires no debate that the contents of a report are to be proved through the testimony of the author and only in the absence of such witness, such a report would be proved by other witnesses, who may be connected with the report or may be conversant with the signature of the author. Merely because the

proceedings are three years' old cannot be a ground for the Family Court to conclude that this petitioner is delaying the matter.

9. In view of the above, this petition is allowed. The impugned order dated 22.5.2019 is quashed and set aside and application Exhibit 1 is allowed.

10. The learned Advocate for the petitioner submits that Dr. Shaikh is her last witness. Learned Advocate for the respondent / husband prays that a time frame may be granted for completing the oral evidence of Dr. Shaikh.

11. Considering the above, it is expected that there would be a timely recording of oral evidence of Dr. Shaikh. It is, however, made clear that merely on account of a time frame, the learned Family Court shall not proceed to close the evidence of the petitioner in the event Dr. Shaikh is unable to appear before the Court on account of her job requirements/exigencies.

(RAVINDRA V. GHUGE, J.)

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