

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

REVIEW APPLICATION NO.198 OF 2019
IN WP/9454/2019

(Mohinder Babulalji Bakharia Vs. Arun Kondibarao Dapkekar and
another)

Mr.R.S.Deshmukh h/f Mr.S.C.Arora, Advocate for the applicant.
Mr.R.D.Biradar, Advocate for respondent No.1.
Mr.N.S.Tekale, Advocate for respondent No.2.
Mr.S.B.Deshpande, A.S.G.I and Mr.S.R.Yadav, AGP, to assist the
Court.

(CORAM : Ravindra V.Ghugre, J.)

DATE : 14/11/2019

PER COURT :

1. On 25/09/2019, the following order was passed :-

“1. I have heard the learned Advocates for the respective sides at length on 18.9.2019 and today. A short issue has been raised in this review petition and keeping in view the law laid down by the Honourable Apex Court in the matter of Lily Thomas Vs. Union of India [AIR 2000 SC 1650], I am considering this application.

2. The learned Advocate for the original defendant concedes that the recording of his evidence was closed on three occasions, in 2016, then on 17.11.2018 after it was reopened and on 10.6.2019 after a third opportunity was granted on 24.1.2019, by way of a last chance. However, neither the impugned order dated 1.4.2019 passed by the trial Court indicates in paragraph No.2 that the evidence was once

again closed on 10.6.2019, nor have the defendants brought it to the notice of the Court that the evidence was closed for the third time on 10.6.2019. I find that this conduct of the defendant is unfair to the Court.

3. *In view of the above, paragraph 11(F) of the order dated 2.8.2019, stands recalled and the defendant would not be permitted to again start the recording of the oral evidence.*

4. *Under paragraph No.11(E), this Court had passed the following order:-*

"(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."

5. *Both the litigating sides consent to the recalling of this direction as both the sides desire to lead evidence, if necessary, on the report received from the Neutron Activation Analysis Laboratory. As such, the direction in clause (E), reproduced above, is recalled and it shall be noted that after the report is tendered by the concerned Laboratory to the trial Court, the litigating sides would be at liberty to lead oral evidence, purely on the said report.*

6. *It has been recently brought to the notice of this Court that though the Andhra Pradesh High Court as well as the Nagpur Bench of this Court has recorded that documents shall be forwarded to the*

Nutron Activation Analysis Laboratory, BABC, Mumbai, there is no such Laboratory available by the abbreviation BABC. Such an analysis Laboratory is available with the Bhaba Atomic Research Center, Mumbai and it has already conveyed in one proceeding that it does not have the machinery and the technology to verify the age of the ink appearing in the writing on a document.

7. In these circumstances, this Court has passed an order on 24.9.2019 in Writ Petition No. 8931 of 2016 directing the learned Registrar to contact the Central Forensic Science Laboratory, Kolkata, to opine as to whether it can decide the age of the ink. The said matter is also kept pending for the said purpose.

8. In view of the above, the learned Advocates for the respective sides submit that this review application can be kept pending only to that extent and can be taken up for passing orders after information is received from the Kolkata Laboratory.”

2. On 18/10/2019, the following order was passed :-

“1. The learned Registrar (Judicial) has placed his report before the Court informing that the Central Forensic Laboratory, Kolkata has informed on telephone through the Director Mr.Bhadauriya that the said laboratory does not have the facility of ascertaining the age of the ink.

2. Mr.Kasliwal, the learned Advocate submits that one last chance may be granted to him to research as to whether there is any such laboratory in India.

3. *In view of the above, these matters shall be listed on 06/11/2019 in the "Passing Orders Category".*"

3. After much deliberations and with the intervention of the learned A.S.G.I. and the learned AGP Mr.Yadav, the Director, C.F.S.L. Rohini, New Delhi, the BARC Mumbai and the Government Institute of Forensic Science, NipatNiranjan Aurangabad were contacted. The learned A.S.G.I. and the learned AGP submit that they have been informed that there is no such facility available in India and these authorities cannot render any assistance to the Court.

4. In view of the above, the directions set out in paragraph 11-A to D stand recalled.

5. Considering the order dated 25/09/2019 and the above order, the directions set out in clauses A to F under paragraph No.11 stand recalled and the review petition stands allowed. Consequentially, Writ Petition No.9454/2019 would not survive and stands disposed off.

6. Needless to state, the parties would be at liberty to advance

final submissions in the matter before the Trial Court.

(Ravindra V.Ghuge, J.)