

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 13583 OF 2018

Rajendra V. Sannake and ors. .. Petitioners
vs.
Pravin B. Sannake and ors. .. Respondents

Mr. Y.P. Narvankar for the Petitioners.
Mr. Pandit Kasar I/b Mr. Rohit Mangsule for Respondent
Nos.1 to 3.

CORAM : M. S. SONAK, J.
DATE : 24 APRIL 2019.

ORAL JUDGMENT :-

- 1] Heard learned counsel for the parties.
- 2] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.
- 3] The challenge in this petition is to the order dated 2nd April 2018 by which the petitioners' application for reference of Deed of Retirement to the opinion of a Handwriting Expert came to be rejected.
- 4] According to me, though, there is no reason to interfere with the order of rejection of the application, it is necessary to clarify that the learned Trial Judge was not at all justified

in making observations that the petitioners have admitted that their father retired from the firm M/s. Vasant & Co. and formed M/s. Vasant Engineering Products. At this stage, there was absolutely no necessity to return such findings. These findings are totally premature and unless the entire evidence had been led by the parties, there was no occasion for recording such findings.

5] Mr. Y.P. Naravankar, learned counsel for the petitioners, is right that in the event the petitioners decide to engage their own Handwriting Expert and examine him as a expert witness, such observations might come in their way.

6] Accordingly, all observations on merits of the matter or on the issue as to whether the factum of retirement was admitted by the petitioners or whether the signature on the Deed of Retirement was that of father of the petitioners are expunged/set aside from the impugned order. It is clarified that such setting aside is not on merits, but such setting aside is because this was not the occasion to return such

findings. Therefore, all contentions of all parties on this issues are expressly kept open.

7] Further, it is clarified that the petitioners are at liberty to engage their own expert witness like Handwriting Expert to depose in the context of Deed of Retirement as well as documents along with Exhibit-47. The parties, have right to examine experts as witnesses and nothing in the impugned order should be construed as precluding the petitioners from their right to do so. No doubt, the respondents will also have right to cross-examine such witnesses/experts on all aspects.

8] Accordingly, although the conclusion in the impugned order dated 2nd April 2018 is not interfered with the findings or the observations made in the impugned order are expunged/set aside for the reasons as aforesaid. Further, liberty is granted to the petitioners to examine expert witnesses in the context of the aforesaid documents, subject, no doubt, to the rights of the respondents to cross-examine the witnesses/experts.

9] At this stage, Mr. Narvankar, learned counsel for the petitioners, points out that the operative portion of the impugned order is based upon the findings recorded by the learned Trial Judge and therefore, even the operative portion is required to be set aside. According to me, it is normally for the parties to produce their own expert witnesses. Routinely, the application cannot be made seeking reference to Handwriting Experts. On this short ground, the application made by the petitioners was required to be dismissed. Merely because this ground finds no direct reflection in the impugned order, it cannot be said that the conclusion recorded in the impugned order is vitiated. In any case, if this Court finds that the application was required to be dismissed on some grounds other than the ground stated by the learned Trial Judge, this Court, in the exercise of its supervisory jurisdiction under Article 227 of the Constitution of India is certainly not precluded from doing so. Otherwise, a lawful conclusion will have to be set aside only on the ground that the reasons stated in the impugned order is not lawful. As long as there are other good reasons for sustaining the impugned order, there is no question of the petitioners

insisting upon any reliefs under Article 226 of the Constitution of India.

10] Rule is made partly absolute in the aforesaid terms. There shall be no order as to costs.

11] Considering that the suit is of the year 2008, learned Trial Judge is directed to dispose of the suit as expeditiously as possible. All parties to cooperate in the expeditious disposal of the suit. In particular, the petitioners should not delay the proceedings in the suit *inter alia* on the ground that some unreasonable time is required for examining the expert witnesses. No doubt, some reasonable time can always be granted to examine the expert witnesses, if they chose to.

12] All concerned to act on the basis of an authenticated copy of this order.

(M. S. SONAK, J.)