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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7315 OF 2017

Tukaram Laxman Patil

..Petitioner.

V/s.

Sou. Bhavana Bhaskar Harad & Anr.

..Respondents.

Mr.R.M.Haridas for the petitioner.

Mr.Girish G. Togani for respondent Nos.1 & 2.

CORAM : M.S.SONAK, J.

DATE : MARCH 19, 2019

ORAL JUDGMENT

Heard Mr.R.M.Haridas, learned counsel for the petitioner and Mr.Girish G.Togani, learned counsel for the respondents.

2. Challenge in this petition is to the order dated March 24, 2017 by which learned Appeal Court has rejected the petitioner's application for referring the disputed sale deed dated November 29, 1995 to an handwriting expert, since, it is the case of the petitioner that the petitioner has not executed the sale deed.

3. Mr.Haridas, learned counsel for the petitioner submits that the appeal is a continuation of the suit. He submits that the Court has

ample powers to direct the disputed document to be referred to the opinion of the handwriting wxpert. He submits that no prejudice will be caused to the respondents, since, after reference to an handwriting expert, the truth will come on record. He relies on the case of *Ashokkumar Uttamchand Shah V/s. Mohamad Asmal Chanchad*¹ in support of his contention.

4. Mr. Togani, learned counsel for the respondents defends the impugned order on the basis of reasoning reflected therein.

5. On due consideration of rival contentions raised at the behest of the petitioner and upon perusing the impugned order, I am satisfied that there is no case made out to interfere with the impugned order.

6. The petitioner is the original plaintiff in the suit seeking cancellation of the sale deed dated November 29, 1995 *inter alia* on the ground that the petitioner had never executed the same. Through the pendency of the suit, the petitioner made no efforts to refer this document to the handwriting expert and seek the opinion of the handwriting expert. The suit was ultimately dismissed.

7. The petitioner then instituted an appeal some time in the year 2012. The appeal was pending for almost four years and, still, no such application was made for reference of the disputed document to

¹ A.I.R. 1999 Gujarat 108

the handwriting expert. In the context of the conduct of the petitioner, the impugned order was passed by the Appeal Court :-

“... In the entire application it is nowhere alleged as to why there is unreasonable delay in filing application for sending the document for inspection to handwriting expert. Since prior to filing suit the plaintiff is alleging that the Sale Deed dated 29/11/1995 is fraudulent. Thus plaintiff was well aware of his own contention of denying the execution of the Sale Deed and further in denying of signature over the same. However, the appellant / plaintiff did not file any application before the trial Court. In appellant Court also he has filed the present application after the period of more than four years, when the appeal was fixed for hearing after compliance of all formalities. It reveals from the record that after adjourning the appeal for hearing from time to time and insistence by the Court for hearing, merely in order to delay the hearing present application is filed by the appellant. Certainly there is no merit in the application. The rulings and ratio therein relied upon by advocate Mr.Tahilramani is certainly not squarely application to the present case. Under such circumstances the application deserves to be rejected. Hence the order” ”

8. In the aforesaid, it is more than clear that the petitioner was not interested in arguing the matter on merits but only interested in protracting the hearing of appeal. There is absolutely no explanation as to why the petitioner need not apply for referring the disputed document to the opinion of handwriting expert during the pendency of

the suit. The delay in the Appeal Court is inordinate and unexplained.

9. The fact situation in *Ashokkumar Uttamchand Shah (supra)* is entirely different from the fact situation in the present case. There, learned trial Judge had chosen to exercise power under section 73 of the Evidence Act and himself compared whether they are authentic or not. It is in these circumstances learned Single Judge of the Gujarat High Court held that in that matter the expert opinion should be obtained as matter of prudence.

10. For all the aforesaid reasons, this petition is dismissed with costs of Rs.2,000/-.

11. The costs be paid to the respondents within a period of four weeks from today. In case there is any difficulty to pay the costs to the respondents directly, the petitioner is at liberty to deposit the costs in the Appeal Court and the respondents are thereafter at liberty to withdraw the same unconditionally.

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

(M.S.SONAK, J.)