

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 181 OF 2015

Raja Construction Company
A Partnership firm having its
Registered office at Pooja Apartments,
St. Andrews Road, Santacruz (W),
Mumbai – 400 054.

.. Petitioner

Vs.

Romesh Sharma
Indian Inhabitant having his address
At Mumbai at R, 3-H. Jai Mata Kutir,
B/49, Gandhigram Road, Juhu,
Mumbai – 400 049.

And having his Delhi address at
C-30, Mayfair Gardens, Hauz Khaz
Enclave, New Delhi – 110 016.

.. Respondent

Shri P.S. Dani, Senior Advocate I/b S.M. Associates for petitioner.

Shri Rashmin Khandekar a/w. Ms. Etam Quraishi I/b M/s. Kartikeya &
Associates for respondent.

CORAM : N.J. JAMADAR, J.

DATE : 22ND MARCH 2019

ORAL JUDGMENT :

1. Rule. Rule is made returnable forthwith and, with the consent of the counsels for parties, heard finally.

2. The challenge in this petition is to an order passed by the learned Judge, City Civil Court, Greater Bombay on 9th September 2014, whereby the learned Judge recorded that the order passed by this Court on 22nd July 1997 in Notice of Motion No.1135 of 1994 in Suit No.1711 of 1994 (before

the suit came to be transferred to the City Civil Court), as regards the tendering of the Conveyance Deed dated 7th October 1981 for sending the same for examination by the Handwriting Expert along with the questioned documents, stood complied with.

3. Shri P.S. Dani, the learned Senior Counsel for the petitioner, urged that the aforesaid observations of the learned Judge, in the impugned order, have the effect of setting at naught the order passed by this Court on 22nd July 1997. The learned Judge has on the basis of a bald statement of the alleged Power of Attorney holder of the defendant that the said Conveyance Deed dated 7th October 1981 is misplaced, recorded that the order stood complied with. The consequences which flow from non-production of the Conveyance Deed dated 7th October 1981, in terms of the order passed by this Court, ought to have been adverted to, and kept open for consideration, urged the learned Senior Counsel.

4. As against this, Shri Rashmin Khandekar, the learned counsel for the respondent, submitted that as the said Conveyance Deed date 7th October 1981 is misplaced, to insist upon the respondent to produce the same would amount to calling upon the respondent to perform an impossible act. It was submitted that the order of the learned Judge needs to be construed in the context only of relieving the respondent of the obligation to produce the said Conveyance Deed dated 7th October 1981.

5. At the outset, it is necessary to note that the suit in question has been instituted for specific performance of the agreement of sale of 2/3rd undivided interest of the defendants in the immovable property situated at Bandra, Mumbai. The question which, *inter-alia*, arises for determination is whether the agreement dated 11th May 1992 in question bears the signature of Shri Romesh Sharma. In the said backdrop, in the order dated 22nd July 1997, this Court has observed that the questioned signatures on the agreement dated 11th May 1992 and the alleged power of attorney dated 11th May 1992 were required to be compared with the signatures of Romesh Sharma on the original Conveyance Deed dated 7th October 1981. Since the original conveyance was with Shri Romesh Sharma, the respondent was directed to produce the Conveyance Deed dated 7th October 1981 with the Prothonotary and Senior Master by 25th July 1997.

6. It seems that the aforesaid part of the order has not been complied with. In the meanwhile, the suit came to be transferred to the City Civil Court. On 14th October 2013, the learned Judge, City Civil Court, recorded that the Handwriting Expert's opinion in terms of the order passed by this Court on 22nd July 1997 was yet not obtained and, therefore, directed the Registrar of the said Court to ensure the compliance of the order dated 22nd July 1997 by sending the documents mentioned therein for seeking opinion of the Handwriting Expert.

7. When the matter was listed before the learned Judge, City Civil court on 9th September 2014, the constituted attorney of the defendant made a statement that the original Conveyance Deed dated 7th October 1981 was misplaced and its copy was kept on the record of the Court and, therefore, he could not comply with the order dated 22nd July 1997. The learned Judge, as indicated above, observed that considering the clarification of the constituted attorney of defendant, the aforesaid order dated 22nd July 1997 stood complied with.

8. The learned Judge seems to have lost sight of the fact that the aforesaid observations were impregnated with certain consequences upon the rights of the parties. The impugned order does not indicate as to whether the learned Judge was of the view that the opinion of the Handwriting Expert was no more necessary for adjudication of the dispute between the parties.

9. It is true that the Conveyance Deed dated 7th October 1981 is not the disputed document. The said Conveyance Deed was ordered to be produced only for the purpose of comparing the signatures on the document in question, on the premise that the signature of the executant on the said Conveyance Deed dated 7th October 1981 was an admitted signature and there was no dispute about its execution. Nevertheless, the

moot question as to whether the agreement in question bears the signature of Mr. Romesh Sharma warrants adjudication. The learned counsel for the respondent submitted that the necessity of such an adjudication is not being questioned by the respondent-defendant.

10. In the aforesaid view of the matter, the impugned order needs to be clarified to the effect that the consequences of non-production of the Conveyance Deed dated 7th October 1981, as permissible in law, will follow. Secondly, the order passed by this Court dated 22nd July 1997 referring the questioned documents for the opinion of the Handwriting Expert holds the field and warrants compliance. For the purpose of comparison, the parties are at liberty to produce any other document, bearing the signature of Mr. Romesh Sharma, which was executed before the documents in question.

11. With the aforesaid observations, the writ petition stands disposed of.

12. Rule made absolute in aforesaid terms.

[N.J. JAMADAR, J.]