

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.8047/2017

Shri Gorelal S/o Shantaram Choudhari and another Vs. Sou.Shantabai w/o Ramkrushna Dange & ors

Office notes Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri R.S.Thengne, Advocate for petitioners.
Shri B.M.Dafle, Advocate for respondent no.1.

CORAM : A.S.CHANDURKAR, J.
DATED : October 03, 2019

The petitioners are the original plaintiffs who are aggrieved by the order dated 19.08.2017 passed by the trial Court below Exhibit 101 thereby rejecting the application filed by them for seeking permission to refer the documents at Exhibits 40 to 45, Exhibit 71 and Exhibit 84 to an handwriting expert so as to obtain his opinion with regard to signatures thereon.

The suit in question has been filed by the petitioners for specific performance of the agreement dated 28.03.2007 followed by subsequent agreement. In the written statement filed by the defendant nos. 1 to 3 the execution of those documents has been denied. The parties thereafter led their evidence. During the course of evidence of the plaintiffs, the aforesaid documents were duly exhibited. The defendants thereafter led their evidence and after they closed their side, the plaintiffs moved an application at Exhibit 101 seeking permission to refer the aforesaid documents to the handwriting expert. The trial Court has rejected that application in the light of defence as raised in the written statement and as the said application was filed belatedly.

Shri R.S.Thengne, learned counsel for the petitioners submits that in view of the cross-examination of the witnesses examined by the defendants wherein the signatures on those documents have been denied, the plaintiffs were compelled to move the aforesaid application. According to him, the last witness was cross-examined on 29.07.2017 and immediately on 19.08.2017 the said application came to be moved. The trial Court was not justified in observing that there was delay in making such application. Since the signatures on the said documents were being denied, it was necessary to refer the documents to the handwriting expert. Hence the application was liable to be allowed.

Shri B.M.Dafle, learned counsel for the respondent supported the impugned order. According to him in the written statement itself a specific defence was raised to dispute the said documents. The burden to prove the execution of those documents was on the plaintiffs and therefore they ought to have taken necessary steps to substantiate their case. After completion of the entire evidence in the suit, the present application was moved. It was rightly rejected by observing that the burden to prove the documents was on the plaintiffs and that it was moved belatedly.

I have heard the learned counsel for the parties and I have perused the documents on record. In the written statement a specific defence has been raised denying the execution of the aforesaid documents. Since the plaintiffs were claiming the relief of specific performance, the burden to prove those document was on the plaintiffs. After examination of various witnesses the aforesaid documents have been exhibited at Exhibits 40 to 45 and Exhibit 71. The defendants had deposed as per their defence. Considering the stand taken in the written statement, it is but natural that they would deny the execution of those documents. It is seen that the application at Exhibit 101 was moved when the suit was fixed for final arguments. The trial Court was therefore justified in observing that it was moved at late stage. It is clear from the record that the burden to

prove those documents since beginning was on the plaintiffs. It is therefore found that the trial Court did not commit any error in rejecting the application by passing order on 19.08.2017.

I do not find any reason to interfere in writ jurisdiction. The writ petition is therefore dismissed. No costs.

JUDGE

Andurkar.