

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1403 OF 2023

Gopal Inswardas Jakhotiya
and another

.... Petitioners

Versus

Vijaykumar Ranulal Jain
and others

.... Respondents

.....

Mr. S.V. Natu, Advocate for the Petitioners

Mr. P.N. Jain and V.C. Patil, Advocates for Respondent No.1

Mr. M.D. Bature, Advocate for Respondent Nos. 2 to 4

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 01st AUGUST, 2023

ORDER :

1. This petition challenges the order passed by the learned Civil Judge, Senior Division, Nandurbar, below Exhibit-78 in Special Civil Suit No.11 of 2018, thereby allowing the application filed by the plaintiff for obtaining voice sample of defendant Nos. 4 and 5 and plaintiff, and sending the same to the forensic laboratory.

2. Respondent No.1/plaintiff has filed suit for specific performance. Along with the plaint, respondent No.1/plaintiff has filed transcript conversation of respondent No.1/plaintiff

with defendant Nos. 4 and 5 in Marwadi language. The defendants have opposed the suit by filing written statement. Defendant Nos.4 and 5 have denied the alleged conversation mentioned in Schedule-A filed along with the plaint.

3. Even before framing of the issues, respondent No.1/plaintiff filed application Exhibit-78 seeking directions for taking voice sample of defendant Nos.4 and 5 with the plaintiff and forwarding the same to the forensic laboratory for comparing with the mobile conversation. Defendant No.3 filed say to the said application. Defendant Nos. 4 and 5 have not filed any say. The Trial Court allowed the application and directed the plaintiff and defendant Nos.4 and 5 to give their voice sample and further directed to forward it to the Government Forensic Laboratory, Nashik for verification. The forensic laboratory is directed to give opinion as to whether the voice in Compact Disc of plaintiff and defendant Nos.3 and 4 matches with the voice sample of the plaintiff and defendant Nos. 3 and 4. The petitioners/original defendant Nos. 4 and 5 are aggrieved by this order.

4. Heard the learned advocate for the petitioners and the learned advocates for the respective respondents. Perused the writ petition memo, annexures thereto, impugned order

and the citations relied upon by the learned advocates for the petitioners and respondents.

5. Learned advocate for the petitioners submits that at this stage, the Trial Court ought not to have passed such order. Issues are yet to be framed. The Compact Disc produced by the plaintiff with certificate under Section 65(B), does not comply with the conditions mentioned in Section 65(B) of the Indian Evidence Act, and therefore, the same is inadmissible in the evidence. This aspect is ignored by the Trial court while passing the impugned order. He submits that this application could have been considered after the plaintiff steps into the witness box and leads his evidence. He further submits that from the transcript of the conversation placed on record by the plaintiff, it is clear that the said conversation is not in respect of the property in question.

6. Learned advocate for the respondent No.1, on the other hand, supported the impugned order.

7. Record indicates that plaintiff has placed on record transcript conversation along with Compact Disc and certificate under Section 65(B) of the Indian Evidence Act. On perusal of certificate filed under Section 65(B), there appears substance

in the submission of learned advocate for the petitioners that, the certificate is not in conformity with the conditions mentioned in Section 65(B) of the Indian Evidence Act.

8. In *Sau. Sarita Vs. Dhananjay, LAWS (BOM) 2018 8 220*, it is held by this Court that, Civil Court can direct a party to give voice sample. Similar view is taken by the Delhi High Court in *Samsonelectricals and anr. Vs. Hansraj Miglani, (Laws DLH) 2007 3 328*. The decision of Delhi High Court is relied upon by the Trial Court in the impugned order. The Trial Court has allowed the application with a view to give fair opportunity to the plaintiff to prove his case.

9. In the light of above, no fault can be found with the order impugned in the present petition. There is no illegality or perversity in the order impugned in the present petition. The writ petition being devoid of merit is dismissed with following observations.

10. The admissibility of the Compact Disc, voice sample and report of the forensic laboratory as well as certificate under Section 65(B) of the Indian Evidence Act shall be considered by the Trial Court during the course of trial.

11. The Trial Court shall also consider, whether the conversation relied upon by the plaintiff is in respect of the property in question while adjudicating the suit.

[NITIN B. SURYAWANSHI]
JUDGE

S.P Rane