

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Writ Petition No.1647 of 2022

Deepa D/O Jiwatram Kewalramani @ Deepa W/O Badal Anandani
Vs
Prakash S/O Jiwatram Kewalramani

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri S.S. Sitani, Advocate for the Petitioner/s
Shri Arjun Raoka, Advocate for the respondent-sole

CORAM : ANIL S. KILOR, J.
DATED : 17.07.2023

1. Heard.
2. In this petition, the application for referring the document i.e. Will (Exh.73) to the handwriting expert, came to be rejected vide impugned order dated 07.01.2022 by 6th Jt. Civil Judge Senior Division, Nagpur, on the ground that though the copy of the Will was produced by the defendant long back after filing of written statement, no challenge was raised by the plaintiff on the ground that the Will is forged and fabricated one.
3. In the present matter, the copy of the original Will was filed on record on 16.03.2016 during the evidence of the defendant and it was exhibited on 28.04.2021 and thereafter, the application for referring the Will for handwriting expert was moved on 09.12.2021.
4. Even if the submission of the learned counsel for the petitioner is considered that, only after the document was

exhibited, he got an occasion for moving such application, there is a delay as the said document was exhibited on 28.04.2021 and the application was filed after about eight months thereafter.

5. Thus, the learned trial Court, while rejecting the application recorded the findings in the impugned order in paragraph 12 onwards and after going through the same, I do not find any illegality committed by the learned trial court in rejecting the said application.

6. However, the observations made by the learned trial Court as regards the comparison of signature on the Will with specimen signature under Section 73 of the Indian Evidence Act, 1872 (for short "Evidence Act"), need to be quashed and set aside for the reason that the trial Court ought to have considered such request or whether there is any case made out for such comparison, after hearing both the parties and while passing the final judgment.

7. However, the learned trial Court while dealing with the application Exh.79 filed by the plaintiff for referring the document for handwriting expert, has erroneously observed that, the Court is not exercising powers under Section 73 of the Indian Evidence Act to compare the signature on the Will with the specimen signature.

8. Hence, I am of the opinion that the said findings are contrary to law and need to be quashed and set aside. Accordingly, I pass the following order:

(i) The writ petition is **disposed of** with a modification in the order below Exh.79 dated 07.01.2022 that, the trial Court shall take decision whether to exercise powers under Section 73 of the Indian Evidence Act to compare the signature on the Will with the specimen signature, after hearing both the parties, while passing the final judgment.

(ii) The petitioner is permitted to withdraw the amount deposited by him in this Court, along with accrued interest thereon.

(iii) The trial Court is directed to expedite the suit.

[ANIL S. KILOR, J.]