

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1867 OF 2024

Rafiq Adam Shaikh & Anr.

.. Petitioners

Versus

Farukh Abdul Shaikh

.. Respondent

-
- Mr. Siddheshwar Baba Kalel for Petitioners
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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 16, 2024

P. C.:

1. Heard Mr. Kalel, learned Advocate for Petitioners.
2. Present Writ Petition takes exception to the order dated 10.10.2023 passed in Application below Exh. 56 filed by Defendants. The Application was filed for referring agreement marked below Exh. 30/1 to the handwriting expert's along with a specimen signature of the Plaintiff. Mr. Kalel for the Defendants in the Suit would submit that admittedly Plaintiff has given possession of suit property to Defendants by executing agreement for lease for 99 years on 05.07.2008. He would draw support for this submission from the Suit plaint itself where there is an admission by Plaintiff. The reason and necessity that has arisen for seeking the handwriting expert's opinion / report is due to the fact that during witness action when the Plaintiff was confronted with the original agreement, Plaintiff has denied having put his signature on the said document. The aforesaid lease

agreement in fact goes to the root of the matter in view of the relief prayed for in the Suit plaint by the Plaintiff namely for possession only. Though the learned Trial Court has rejected the Application, but while doing so, learned Trial Court has itself opined that such an Application is maintainable only as a matter of last resort and it is stated that the Applicant ought to have adopted various other means to prove the said document. Considering the fact that the issue of attestation of the said document is now rested in view of the provisions of Section 72 of the Indian Evidence Act, 1871, it is seen that the document exhibited as Exh. 30/1 is the original lease document and it has been marked in evidence. In view of the denial of the Plaintiff of having appended his signature on the said document, every opportunity is required to be given to the Defendant to prove the said document including the plea set up by Defendant in his Application below Exh. 56, if it is required to so. It needs to be understood that there is no witness to the execution of the said lease deed and therefore right of the Defendants to prove the said document gets narrowed down. Since the document has already been exhibited in evidence, to prove its contents as also the execution of the document, Application filed by the Defendant ought to have been allowed.

3. An arguable case therefore is made out by Mr. Kalel for issuance of notice and stay of any further proceedings in RCS No. 601/2015. Impugned order dated 10.10.2023 stand stayed. Learned Trial Court is requested by this Court to defer hearing of the Suit proceedings by a further period of three weeks so as to enable this Court to dispose of the present Writ Petition.

4. In the meanwhile, issue notice to the Respondent made returnable on 08.03.2024. Humdast permitted. In addition to Court's notice, Petitioners are directed to serve copy of the Petition along with copy of this order on the Respondent and inform about the next date of hearing by any permissible mode of service and file appropriate affidavit of service with tangible proof thereof on or before the next date. After receiving the notice, Respondent to file affidavit-in-reply on or before the next date, if so desired with an advance copy to the Advocate for Petitioners.

5. Respondent is directed to remain present either himself or through his Advocate on the next adjourned date. It is made clear that if Respondent remains absent despite service on the next adjourned date, this Writ Petition shall be heard and disposed of at the stage of admission in the absence of the Respondent.

6. Stand over to **8th March, 2024 at 2:30 p.m.**

[MILIND N. JADHAV, J.]