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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 57 OF 2026

RUPA JITENDRA DESHPRABHU
AND 2 ORS.

... Petitioners

Versus

ACHALADEVI RAGHUNATHRAO PRABHU
DESAI DESHPRABHU RAU RAJE @
DEVIKA DILIP KULKARNI

... Respondents

Mr. Yasir Rauf with Mr. Shrey Sahai, Mr. Deepak Chhikara,
Mr. Vineet Surlakar and Mr. Shane Coutinho, Advocates for the
Petitioners.

Mr. Sudin Usgaonkar, Senior Advocate with Mr. Ashwin
Ramani, Advocate for the Respondents.

CORAM:- VALMIKI MENEZES, J.

DATED :- 30th JANUARY, 2026

ORAL ORDER

1. Registry to waive office objections and register the matter.
2. This petition under Article 227 of the Constitution of India impugns order dated 03.05.2025, passed by the Civil Judge Senior Division at Mapusa in Special Civil Suit No. 107/2023/C, by which the Civil Court has dismissed the Petitioner's application seeking the following reliefs:

(a) For a direction that the Plaintiff deposits the original document titled “Acknowledgement Withdrawal Authority” dated 20.11.1977, before the Trial Court.

(b) That upon the document being deposited, the Trial Court call for the opinion and report from a handwriting expert to verify whether the signature on the document is of late Raghuraj Vassudev Deshprabhu, after comparing it with admitted documents, which are the Consent Terms and Schedules filed in Special Civil Suit No. 10/1975.

The Petitioners are the Defendants in the suit filed by the Respondent, original Plaintiff.

3. The following facts are relevant to the decision in this petition:

(a) The Plaintiff/Respondent herein filed the suit seeking a declaration that the Deed of Exchange dated 29.11.1977, registered at Pernem, Goa, was void and invalid; the suit, also sought a declaration that the Deed of Exchange dated 29.11.1977 be delivered up and cancelled. The reliefs sought in the plaint were on the premise that the Deed of exchange was executed by the father of the Plaintiff, for the Plaintiff and the husband of Defendant No.1, who is now deceased; it is the Plaintiff’s case that his father was not empowered to execute that document as the Attorney of the

parties and could not represent them in the Deed of exchange.

(b) The plaint contains an averment at paragraph No. 16, that the Power of Attorney executed in favour of the Plaintiff's father, at an earlier date or around 24.11.1977, was subsequently revoked and such revocation was recorded as "Acknowledgement Withdrawal Authority" and this was recorded in the document titled "Acknowledgement Withdrawal Authority" dated 25.11.1977. The plaint avers that this document was executed before a Notary at Mumbai. This document is relied upon by the Plaintiff in the list of documents, and the original is presently in the possession of the Plaintiff.

(c) In the written statement, the Defendant denies the execution of such a document and has taken up a plea that if such a document exists, it is executed fraudulently and was not signed by the father of the Plaintiff (Raghuraj Vassudev Deshprabhu) and of the late husband of Defendant No. 1.

(d) About seven months, after the written statement was filed i.e. on 18.07.2024, the Defendants have filed the application at Exhibit D-26, purporting to be under Section 151 CPC seeking direction to produce the original of the

aforementioned document to be submitted for the opinion of the handwriting expert and to ascertain whether the signature thereon is in fact that of late Raghuraj Vassudev Deshprabhu. This application came to be dismissed by the impugned order.

4. Learned Advocate Mr. Yasir Rauf, appearing for the Petitioners has advanced the following submissions:

(i) It was submitted that though the application is styled as one under Section 151 CPC, essentially the application seeks to invoke the Court's powers under Order 26 Rule 10A CPC, by which the Court is empowered to appoint a Commissioner to examine any documents (in this case a handwriting expert), to examine whether the signature on the document in question was in fact that of Raghuraj Vassudev Deshprabhu. It was further submitted that the Trial Court has refused to exercise powers under these provisions, for reasons which are not germane from the application. It was submitted that the application has been filed as at the earliest opportunity after filing of the written statement, and records the apprehension of the Defendants that the document in question may be destroyed before it is produced in evidence, in which case the Defendants would not be in a position to prove that the signature contained on the document is not of that of Raghuraj Vassudev

Deshprabhu, but in fact is a forgery. Reliance has been placed on *Subrai Motors Pvt. Ltd. V/s Goa Urban Co-operative Bank Ltd. And anr*¹ and *S. Chinnathai V/s K. C. Chinnadurai*²

5. These submissions have been opposed by Mr. Sudin Usgaonkar, learned Senior Advocate appearing for the Respondents, whose primary contention is that exercise of powers under Order 26 Rule 10A CPC by the Trial Court would be premature at this stage, since the Plaintiff has not even tendered the document in evidence. It was further submitted that powers under Order 26 Rule 10A CPC are not to be exercised by the Court to enable any party to collect evidence, at the stage where even issues have not been framed, as in the present one. It is submitted that it is only after issues are framed, and after the original documents are inspected, and only after the document is tendered in evidence, if the Court expresses its opinion that the document may be forged, it may exercise powers under Order 26 Rule 10A CPC and not at this stage.

6. There is no doubt that the provision of Order 26 Rule 10A CPC empowers the Civil Court to appoint a Commissioner to examine any document or when any question arises in the suit which involves any scientific investigation and to present to the

¹ 2012 SCC OnLine Bom 1420

² 2010 (1) MWN (Civil) 413

Court its opinion or report on such point, the Court may direct scientific investigation. These provisions are obviously an aid to the Court, if the Court requires any evidence to be examined, and an opinion be given by a person with specific Scientific knowledge, either on the document or on such other question that arises in the suit. These provisions are not restricted to just documents, but may exercise regarding any subject matter in the present case.

7. In the present, for the Court to express any opinion that there is a need for the document in question to be examined, it obviously would have to examine the document, but only after it is produced in evidence by the plaintiff. The success in the suit of the plaintiff hinges upon the Plaintiff proving the document in question i.e. “Acknowledgement Withdrawal Authority” executed on 25.11.1977, was in fact signed by Raghuraj Vassudev Deshprabhu before a Notary. Even without the Defendant's evidence, if the Plaintiffs choose not to produce the original of this document, obviously, his suit must fail. Apart from the production of the original document, the plaintiff may also choose to examine such other witnesses to prove the contents of that document. It is obviously premature at this stage for the Court to even express its opinion or to invoke its powers under Order 26 Rule 10A CPC, without the documents being tendered in evidence.

8. Judgment of the Madras High Court in *S. Chinnathai* (supra) cited by the Petitioner only expresses that applications under Order 26 Rule 10-A CPC, in the normal course ought to be filed at the earliest possible point of time. Certain legal propositions, and the manner in which powers under Order 26 Rule 10A CPC are to be exercised are found quoted in para 18 of the Judgment. Para 18 of the Judgement reads as under:

“18. However, on a consideration of the above said legal position, the following principles emerge for consideration:

1. The civil Court is having jurisdiction to send the document to the Forensic Expert for comparing the signatures between the disputed documents with the admitted documents by appointing a Commissioner and get a report.

2. When the civil Court is exercising its power under Section 73 of the Indian Evidence Act, the civil Court will have to exercise its power under Order 26 Rule 10A of the Civil Procedure Code instead of invoking Section 73 of the Indian Evidence Act.

3. The Advocate Commissioner, being an officer of the Court can be asked to take the original document.

4. When the Advocate Commissioner takes the original document, then a certified copy of the same will have to be kept under the custody of the Court.

5. The civil Court cannot direct the disputed document to be compared with the vakalat or written statement of a party.

6. When the civil Court comes to the conclusion that the power under Order 26 Rule 10A of the Civil Procedure Code should be invoked, then the civil Court shall invoke

the same even without an application from the parties concerned in the interest of justice and in order to solve the dispute between the parties.

7. When a document is sent to an expert it should be sent only to the Government Department Expert and not to a private Expert. While sending a document to an expert, the original of the same has to be sent since it is not possible to compare the xerox copies with the other admitted documents.

8. The civil Court shall not dismiss an application seeking for the examination of the document by an expert on the ground of wrong quoting of provision of law and in such a case, the Court shall exercise under Order 26 Rule 10A of the Civil Procedure Code.

9. The civil Court shall exercise under Order 26 Rule 10A of the Civil Procedure Code even when a prayer is sought for a direction to summon the expert to the Court for the purpose of examining the document.

10. An application filed under Order 26 Rule 10A of the Civil Procedure Code will have to be filed at the earliest opportunity in the normal circumstances.

11. However, an application under Order 26 Rule 10A of the Civil Procedure Code cannot be dismissed merely on the question of delay alone, unless the same is willful and deliberate.

With the above observations, the Civil Revision Petition is hereby dismissed. Consequently, connected Miscellaneous Petition is closed. There shall be no orders as to costs.”

9. As observed earlier, all that the Judgment states, as one of the observations on this provision, is that the application under this provision will have to be filed at the earliest opportunity in normal circumstances.

10. In the present case, the document sought to be examined has not even being tendered in evidence. Therefore, in these circumstances, it would be premature to exercise any powers under 26 Rule 10A CPC at this stage. If, in the opinion of the Trial Court, it is required to exercise this power, it would exercise it at the appropriate stage.

11. In *Subrai Motors (supra)*, this court was concerned with an application under Order 26 Rule 10-A CPC, at the stage after the evidence was led. It is evident from a reading of paragraph No. 13 of the Judgment that the Trial Court had refused to exercise its jurisdiction under those provisions, even though the document was produced in evidence and the parties had led their evidence. On these facts, this Judgment would not apply to the facts before me, since even issues in the suit are not yet framed by the Trial Court, and trial also has not commenced.

12. On going through the judgment of the trial court, I find no reason to interfere with the reasoning adopted by the Trial Court for refusing to exercise its powers to appoint a commissioner at this stage. The impugned order has been correctly passed, and the refusal to exercise powers under Order 26 Rule 10-A CPC at this stage cannot be interfered with for the reasons stated above.

13. Consequently, the Writ Petition is dismissed. No order as to costs.

VALMIKI MENEZES, J.