

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7850 OF 2009

Ananda Ramchandra (Dadu)

Wagare and Ors.

.. Petitioners.

Vs.

Ashok Hari Wagare & Ors.

.. Respondents.

Mr.Amit B.Borkar for the petitioners.

CORAM : D.B. BHOSALE, J.

DATED : 30TH SEPTEMBER, 2009

P.C.

. Heard learned counsel for the parties.

2. This petition is directed against the judgment and order dated 1.8.2009 passed by the Co-operative Appellate Court in revision application No.99 of 2009. The revision was directed against two orders, both dated 7.7.2009, passed on the applications dated 17.6.2009 and 29.6.2009 filed by the petitioners in dispute No.CCS-263/2008. By the impugned orders both the applications have been rejected. The appellate court while rejecting the revision application No.99 of 2009 in paragraph 3 held thus:

“As far as signatures and thumb impression, there is word against word. In my opinion, the trial court itself has a right to compare the signatures and thumb impression of exh.1, exh.2 and exh.5 u/s 73 of the Evidence Act. Therefore, if it is pointed out to the court with

prima facie case that there is variance in two signatures or the thumb impression, the court is competent to take decision at the proper time. Therefore, trial Court has rightly held that at this stage, it is not necessary to send documents for expert opinion. Further more the original dispute has been made time bound by Hon'ble High Court which is an election dispute challenging the election of the applicants, who had moved the application for sending the documents for expert opinion. Even though documents are sent for expert opinion, it is not possible to receive the expert report within the time stipulated by Hon'ble High Court to dispose of the dispute. Accordingly, the trial Court has rightly rejected the application dt.17/6/2009 and no interference is necessary in the said order.

As far as the second order passed below application dt.29/6/2009 is concerned, which was made to club together two disputes being Nos. 40/08 and 274/08, the trial Court has rightly observed while rejecting said application that questions involved in two dispute are entirely different and each dispute can be heard and decided in due course. In my opinion, no interference is necessary in that order also."

3. From perusal of the impugned order and the other material on record I am satisfied that the application dated 17.6.2009 filed by the petitioners for referring the disputants

signature on Vakalatnama to the handwriting expert has been rightly rejected for the reasons recorded in the order. Insofar as the second application dated 29.6.2009 is concerned, by this application the petitioners prayed for clubbing two disputes, namely, the dispute filed by the respondents being dispute No. 263 of 2008, and the dispute filed by the petitioners being dispute No.CCS-263/2008 since parties in both the disputes are same and the decisions, according to the petitioners, in both disputes will have bearing on each other. Even if the ground on which the petitioners are seeking the relief is correct, in my opinion, dispute No.CCS-263/2008 being an election dispute need not be clubbed with the dispute filed by the petitioners. The court below has rightly rejected the petitioners prayer. However, looking to the nature of controversy and the issues involved in both the disputes it is desirable that the co-operative court shall decide both the disputes one after another. In the course of hearing of the disputes if the co-operative court finds it proper to decide the dispute filed by the petitioners' first in point of time, the court below may do so. However, it is made clear that I have not issued any such direction to the co-operative court and it is left to discretion of the court. With these observations the writ petition is disposed of.

(D. B. Bhosale, J.)