

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11340 OF 2015
WITH
CIVIL APPLICATION NO.3179 FO 2015 In WP/11340/2105**

Mohammed Arif Shafeeq Ahmed
Patel

..Petitioner

Vs

1.State of Maharashtra and Ors

.. Respondents

Mr. Rajashekar Govilkar a/w Ms. Sawant and Mr. Satish Chettiyar
i/b Vishwakarma & Associates, Advocates for Petitioner.

CORAM : R.G.KETKAR,J.
DATE : 11/12/2015

PC:

1. Not on Board. At the request of Mr.Govilkar, taken up for admission as the next date of hearing before the trial Court is Monday, ie 14.12.2015. Heard Mr. Rajashekar Govilkar, learned counsel for the petitioner.

2. By this Petition under Article 227 of the Constitution of India, original plaintiff has challenged the Judgment and order dated 8.10.2015 passed by the learned Civil Judge, Senior Division, Pavel below Exhibit 141 in Special Civil Suit No.514 of 2008. By that order, the learned trial Judge rejected the application made by the plaintiff for sending agreement of sale dated 2/5.10.2006 to handwriting expert to prove signature of defendant no.1.

3. It is not in dispute that the plaintiff has instituted suit for specific performance of contract dated 2/5.10.2006. Defendants no.1 and 2 filed written statement opposing this. In particular, in paragraph 7 defendant no.1 denied his signature on the said agreement. It was further contended that defendant no.2 has not signed on that agreement. Defendant no.2 did not appoint defendant no.1 as her Power of Attorney.

4. The learned trial Judge framed issues on 16.2.2009 and parties led evidence. During the pendency of the suit, the defendants took out application Exh.43 for sending the agreement to sell to handwriting expert for verifying signature. The application was opposed by the plaintiff by filing say at Exh.44. After hearing both sides, the learned trial Judge rejected the application. It is thereafter the plaintiff has taken out present application for sending the agreement of sale to the handwriting expert.

5. By the impugned order, the learned trial Judge rejected the application on two counts, namely (1) the defendants specifically contended that they have denied signatures on the agreement of sale and (2) the defendants filed application for sending that document to the handwriting expert which was opposed by the plaintiff and the application was rejected.

6. Mr. Govilkar submitted that the defendants gave purshis

that they do not want to lead evidence. It is, therefore necessary for the plaintiff by way of abundant caution to prove the signature of defendant no.1 on the agreement of sale. It is, necessary to send the agreement of sale to the handwriting expert for verifying whether it bears signature of defendant no.1 or not.

7. It is not possible to accept this submission for more than one reason. In the first place, the defendants have specifically denied their signatures on the agreement of sale and in particular signature of defendant no.1. In fact, the plaintiff ought to have filed application for sending the agreement of sale to the handwriting expert at the earliest available opportunity. That apart, when the defendants filed application for that relief, that was opposed by the plaintiff. While rejecting the application, the learned trial Judge, apart from these reasons, also observed that the evidence of both the parties is over. It appears that just to protract the trial, the plaintiff has filed the application and he rejected the application subject to costs of Rs.1000/-.

8. After perusing the material on record, I do not find that the learned trial Judge has committed any error. Petition fails and the same is dismissed. In view of disposal of the Petition, Civil Application No.3179 of 2015 for stay does not survive and the same is disposed of.

9. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in Memorandum of Appeal as contemplated by Section 105(1) of C.P.C.

(R.G.KETKAR, J.)