

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION (ST) NO. 14858 OF 2016**

Shaikh Salim Shaikh Ansar @
Salim A. Shaikh

..Petitioner.

Vs

1. G. Chandrashekar and Ors

.. Respondents

Mr. Madhuranjan Shetty, Advocate for the petitioner.
Mr. Sachin P. Shetye, Advocate for Respondent no.1.

**CORAM : R.G.KETKAR,J.
DATE : 06/06/2016**

PC:

1. Heard Mr .M.R.Shetty, learned counsel for the petitioners and Mr. Sachin Shetye, learned counsel for respondent no.1 at length.
2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged Judgment and order dated 28.4.2016 passed by the learned Judge, presiding over Court Room No.8/23 of the Court of Small Causes at Mumbai, below Exhibit-61 in R.A.E.Suit No.911 of 2010. By that order, the learned trial Judge allowed the application made by respondent no.1, hereinafter referred to as plaintiff, seeking assistance of handwriting expert for examining disputed signatures of the petitioner, hereinafter referred to as 'defendant', on (i) counterfoil of rent receipts Exhibit-15, (ii) postal acknowledgement Exhibit-

16 and (iii) declaration Exhibit-17.

3. Mr. Shetty strenuously contended that in the written statement, the defendant has specifically contended that he is not a tenant of the plaintiff in respect of the suit premises. The plaintiff ought to have taken out application for sending the disputed documents for the opinion of the handwriting expert. However, the plaintiff did not take out the application. The matter is fully argued and was posted for judgment. The matter was adjourned from time to time and at that stage the plaintiff took out present application. He has further submitted that C.P.C lays down that the Court shall endeavour to dispose of suit as expeditiously as possible and, in any case, will render the decision immediately after the arguments are concluded. He, therefore, submitted that the learned trial Judge committed serious error in allowing the application. He further invited my attention to clause 3(b) of the operative part of the order and submitted that the learned trial Judge has directed the handwriting expert to find out whether there is any similarity in the signatures of the disputed documents and signatures on agreement dated 16.5.2002 Exhibit-23, Vakalatnama Exhibit-8, Written Statement Exhibit-9, affidavit of examination-in-chief Exhibit-20 and specimen signatures of the defendant Exhibit-63. He submitted that basically it is the case of the defendant that

these signatures appearing on the disputed documents are forged and possibility of similarity of signatures cannot be ruled out.

4. On the other hand, Mr. Sachin P. Shetye supported the impugned order. He submitted that it is the case of the plaintiff that the defendant is paying monthly rent in respect of the suit premises. The defendant made payment of rent and in token of receipt of rent, he had signed on the backside of counterfoil at Exhibit-15 collectively as also further signed at Exhibit-16, i.e. postal acknowledgement and had signed declaration Exhibit-17 before Metropolitan Registrar, Mumbai. Despite that, he is refusing the said signature in his written statement as also denying the relationship of landlord and tenant between the plaintiff and the defendant.

5. I have considered the submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. For the reasons recorded in paragraphs 6 and 10 of the impugned order, I do not find that the learned trial Judge has committed any error. As far as the direction contained in clause 3(b) is concerned, it is not necessary to express any opinion at this stage. Suffice it to say that all the contentions in that regard are left open. Hence, Petition fails and the same is dismissed. 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 the memorandum of appeal as contemplated by Section 105(1) of C.P.C.

(R.G.KETKAR, J.)