

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 7408 OF 2015**

Shri Kedarnath Sugar &  
Agroproducts Ltd

..Petitioner.

Vs

Sai Infotech Education Sales  
Services

.. Respondent

Mr. S.S.Patwardhan a/w Mr. B. Mandlik, Advocate for Petitioner.  
Mr. S.C.Mangle i/b Mr S.B.Deshmukh, Advocate for Respondent.  
Mr. Abhijit J. Adnaik, Managing Director of Respondent present.

**CORAM : R.G.KETKAR,J.  
DATE : 20/12/2016**

**PC:**

1. Heard Mr.S.S.Patwardhan, learned counsel for the petitioner and Mr.S.C.Mangle, learned counsel for the respondent at length. Rule. Mr.Mangle waives service for the respondent. In view of the narrow controversy raised in this petition as also at the request and by consent of the parties, Rule is made returnable forthwith and petition is taken up for final hearing.

2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as 'plaintiff', has challenged the Judgment and order dated 7.7.2015 passed by the learned 3<sup>rd</sup> jt. Civil Judge, Senior Division, Kolhapur below Exhibit-283 in Summary Suit No.12 of 2010. By that order, the learned trial Judge rejected the application made by the petitioner, hereinafter referred to as 'defendant', inter alia

praying for (a) sending the documents at Sr. No. 17 to 21 along with list at Exhibit-133 to the handwriting expert for verifying the signatures of the plaintiff on it; (b) for sending purchase order dated 22.9.2014 at Sr.No.1 of list at Exhibit 101 for verifying the seal of the defendant on the first page and on the remaining pages and for ascertaining whether the said order is intact or the pages are removed or added.

3. Mr. Mangle states that Managing Director of respondent Mr Abhijit Adnaik is present in the Court. He has tendered photocopy of his Pan Card which is taken on record and marked "X" for identification. Upon taking instructions from him, Mr. Mangle submits that application may be allowed in terms of prayer clause (A).

4. As far as prayer clause (B) is concerned, he has invited my attention to the impugned order and submitted that no case is made out for grant of relief (B).

5. Mr.Patwardhan strenuously contended that the respondent-plaintiff has produced purchase order. The first page of that order bears a different seal compared to seal on rest of the pages. Last page is also removed. It is, therefore, necessary to send the purchase order produced by the plaintiff to the expert for his opinion about the seal of the defendant on the first page and on the remaining pages and also for the purpose of ascertaining whether the order is intact or some pages are removed.

6. He relied upon Section 45 of the Indian Evidence Act, 1872 to contend that when the Court has to form an opinion as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled persons, namely experts, are relevant facts. For the purpose of arriving at the decision whether the purchase order is intact or whether first page bears the seal of the defendant as compared to rest of the pages, it is necessary to send purchase order for the opinion of expert.

7. I do not find any merit in this submission. The learned trial Judge has also observed in paragraph 5 that the plaintiff's evidence was over on 5.11.2014 . The defendant has examined seven witnesses. In paragraph 6, the learned trial Judge has referred to Section 45 of the Act and observed that expert opinion cannot be called for determining that pages of original order are intact or removed. The handwriting expert is not the person who can throw light on this aspect. Mr. Patwardhan submitted that the learned trial Judge, however, has not dealt with the prayer for verifying the seal of the defendant on the first page and on the rest of pages of the purchase order. In my opinion, it is not necessary to send purchase order for expert's opinion, more so when it is within the discretion of the trial Court. As noted earlier, the defendant has already examined seven witnesses. For the reasons set out in paragraphs 5 and 6 of the order, I do not find that the learned trial Judge has committed

any order in rejecting the prayer clause (B) of the application.

8. As the respondent has conceded to allowing the application in terms of prayer clause (A), Rule is made partly absolute with no order as to costs. Application Exhibit-283 is allowed in terms of prayer clause (A). Prayer clause (A) reads thus:

“(A) The application may kindly be allowed and the document at Sr.No. 17, 18,19,20, and 21 at Exh.133. Purchases order Exh.146 be sent to the handwriting expert for verifying the signatures of plaintiff on it and the endorsement received and accepted along with admitted signatures and the specimen signatures and endorsement.”

9. As far as rejection of prayer clause (B) is concerned, 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. Interim order is vacated.

(R.G.KETKAR, J.)