

IN THE HIGH COURT OF JUDICATURE AT MUMBAI  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO.9554 OF 2015

M/s. Ishwar Constructions Private Limited through its  
Managing Director Ishwar Chandulal Parmar ... Petitioners  
Vs.  
Rahul Arun Pathak ... Respondent

Mr. Atul Damle, Senior Advocate i/b. Mr. K. Y. Mandlik for Petitioners.  
Mr. Rahul Arun Pathak, Respondent in person.

**CORAM : R. G. KETKAR, J.**  
**DATE : MARCH 30, 2016**

**P.C. :**

Heard Mr. Damle, learned Senior Counsel for petitioners and  
Mr. Rahul Pathak, respondent in person at length.

2. By this Petition under Article 227 of the Constitution of India, petitioners have challenged the judgment and order dated 30.07.2015 passed by the learned 2<sup>nd</sup> Joint Civil Judge, Senior Division, Pune below exhibit-101 in Special Civil Suit No.1832 of 2010. By that order, the learned trial Judge kept all the contentions raised by the petitioners, hereinafter referred to as plaintiffs, in the application exhibit-101 open and issued witness summons to Ms Ashwini Becnalkar to appear in the Court for examination.

3. Plaintiffs have instituted the Suit against the respondent, hereinafter referred to as defendant, for refund of amount of Rs.1,46,00,000/- to the plaintiffs together with interest @18% p.a. compounded annually on Rs.1,46,00,000/- from 15.03.2010 till the realization of amount. Defendant filed written statement dated 12.03.2013 resisting the Suit.

4. During the pendency of the Suit, plaintiffs took out application exhibit-101 on 11.08.2014 inter alia praying for sending disputed signatures of Ms Ashwini Becnalkar i.e. list at exhibit-77 at serial No.17 and 22 and list at exhibit-72 at serial No.2 along with exhibit-97 to the handwriting expert for the report about the signature of Ms Ashwini Becnalkar. Defendant resisted the application by filing reply dated 09.09.2014 at exhibit-103. By the impugned order, the learned trial Judge issued witness summons to Ms Ashwini Becnalkar to appear in the Court for examination and kept all contentions raised by the plaintiff in application at exhibit-101 open. The learned trial Judge held that Ms Ashwini Becnalkar though ex-employee of the plaintiff company, is resident of Pune. He referred to Order XVI, Rule 14 as well as Rule 19 of the Code of Civil Procedure, 1908 (for short 'C.P.C.') and observed that when the author of the alleged signature is very much alive and residing within the limits of Court, it is desirable to call such person though stranger to the Suit to either admit or deny those signatures. This will not only curtail unnecessary exercise and valuable time of the Court but will also help to bring the true facts on record from the mouth of the author itself.

5. Mr. Damle submitted that the learned trial Judge was not justified in passing the impugned order as plaintiffs had sought opinion of handwriting expert by sending the documents allegedly signed by Ms Ashwini Becnalkar. It is not possible to accept this submission. Order XVI, Rule 14 of C.P.C. reads thus,

**“14. Court may of its own accord summon as witnesses strangers to suit.-** Subject to the provisions of this Code as to attendance and appearance and to any law for the time being in force, where the Court at any time thinks it necessary to examine any person, including a party to the suit, and not called as a witness by a party to the suit, the Court may, of its own motion, cause such person to be summoned as a witness to give evidence, or to produce any document in his possession, on a day to be

appointed, and may examine him as a witness or require him to produce such document.”

6. Order XVI, Rule 19 of C.P.C. lays down that no one shall be ordered to attend in person to give evidence unless he resides within the local limits of the Court's ordinary original jurisdiction.

7. As plaintiffs have prayed for sending disputed documents for the opinion of the handwriting expert for report about the signatures of Ms Ashwini Beknalkar and it is not disputed that Ms Ashwini Beknalkar resides within the limits of the Court, I do not find that the learned trial Judge has committed any error in invoking provisions of Order XVI, Rules 14 and 19 of C.P.C. For the reasons stated in paragraph 3 of the impugned order, I do not find that any case is made out for invocation of powers under Article 227 of the Constitution of India, more so when the learned trial Judge has kept all the contentions of the plaintiffs open. Hence, Petition fails and the same is dismissed.

8. 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.

9. As the said witness is called as Court Witness, parties are at liberty to cross-examine the said witness. Liberty is reserved to the parties to apply to the trial Court for expeditious disposal of the Suit. If such application is taken out, the learned trial Judge will pass appropriate order thereon. Order accordingly.

**(R. G. KETKAR, J.)**