

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,  
BENCH AT AURANGABAD.

**910 WRIT PETITION NO. 700 OF 2017**

ASHOK BALASAHEB LONDHE  
VERSUS  
KISHOR KISANRAO JEJURKAR

...

Advocate for Petitioner : Mr. Ajay T. Kanawade.

Advocate for Respondent : Mr. Amol S. Gandhi.

...

CORAM : **V. K. JADHAV, J.**

DATE : 31<sup>st</sup> October, 2017.

**ORDER:**

. Heard finally with consent at admission stage.

2 Being aggrieved by the order dated 25<sup>th</sup> November, 2016 below Exhibit 91 in Regular Civil Suit No.401 of 2013 passed by the 2<sup>nd</sup> Joint Civil Judge Senior Division, Ahmednagar, the original Defendant has preferred this writ petition.

3 Brief facts giving rise to the present writ petition are as follows:

- a) The Petitioner / original Defendant has filed an application Exhibit 91 in RCS No.401 of 2013 and requested therein to send the bearer cheque to the handwriting expert for comparing his signature on the

backside of the said cheque with his admitted signatures. It is the case of the Petitioner / original Defendant that the Respondent / original Plaintiff has never given any bearer cheque to him and that he has not encashed the said cheque. The Petitioner / original Defendant has denied the entire transaction and accordingly filed the aforesaid application Exhibit 91.

- b) The Respondent / original Plaintiff has strongly resisted the said application by filing say at Exhibit 92. The learned 2<sup>nd</sup> Joint Civil Judge Senior Division, Ahmednagar vide impugned order dated 25<sup>th</sup> November, 2016 below application Exhibit 91, rejected the said application. Hence, this writ petition.

4           The learned counsel for Petitioner / original Defendant submits that the Petitioner has denied the entire transaction and as such, requested the Court by filing application Exhibit 91 to send the bearer cheque to the handwriting expert for comparing his signature on the backside of the said cheque with his admitted signatures. The learned counsel submits that the Petitioner came to be acquitted in

Summary Trial Case No.1513 of 2011, which is in respect of the dishonour of cheque in respect of the same transaction filed under Section 138 of the Negotiable Instruments Act. The learned counsel submits that even in the said criminal case, the Respondent / original Plaintiff has failed to prove the transaction and as such, the Petitioner / original Defendant came to be acquitted in the said criminal case.

5           The learned counsel for Petitioner / original Defendant in order to substantiate his contentions placed his reliance in the case of **Srikant Balwant Nalawade Vs. Bajarang Yashwant Nimbalkar and others**, reported in, **2014 (1) Mh.L.J. 865**.

6           The learned counsel for Respondent / original Plaintiff submits that the Petitioner / original Defendant has not specifically denied his signature on the backside of the said bearer cheque. The learned counsel submits that the Respondent / original Plaintiff has examined the Branch Manager of the bank as his witness and the said witness has deposed before the Trial Court that the said cheque bears the signature of the person in whose favour the cheque has been issued. The learned counsel submits that though this is the suit of the year 2011, the Petitioner / original Defendant has not requested the Trial Court to send the said cheque to handwriting expert for

comparison of signature and only after the evidence of both the parties came to be closed, at the belated stage, the Petitioner / original Defendant has preferred the application Exhibit 91. The learned counsel submits that the Petitioner / original Defendant is playing all the tactics to delay the trial. The learned Judge of the Trial Court has therefore, rightly rejected the application Exhibit 91. The learned counsel submits that the Court below having regard to the facts of the case, declined to send the cheque for the opinion of handwriting expert and as such, no interference is required in the impugned order.

7           The learned counsel for Respondent / original Plaintiff in order to substantiate his contentions placed his reliance in the case of **Gowri Shankar Vs. J. L. Babu and Anr**, reported in, **AIR 2012 Andhra Pradesh 118**.

8           On perusal of the written statement filed by the Petitioner / original Defendant, it appears that in the written statement, particularly in para 6, the Petitioner / original Defendant has denied the entire transaction. The Petitioner / original Defendant has denied that the Respondent / original Plaintiff has given him an amount of Rs.4,00,000/- by issuing a bearer cheque of his account maintained in the bank and that the Petitioner / original Defendant has received the

said amount under the said bearer cheque. It further appears that in terms of the said pleadings, the Petitioner / original Defendant has filed his affidavit of evidence wherein he has specifically denied his signature on the backside of the said bearer cheque. It also appears from the evidence of the witness Branch Manger examined by the Respondent / original Plaintiff, that the said witness could not identify the Petitioner as a bearer of the said cheque and that the Petitioner signed the cheque in his presence before the encashment. The learned Judge of the Trial Court has ignored the specific denial of the Petitioner / original Defendant in his pleadings about the entire transaction and unnecessarily given weightage to the fact that the Petitioner / original Defendant has not specifically pleaded in the statement about the denial of his signature on the backside portion of the said bearer cheque. The Petitioner / original Defendant has every right to substantiate his defence though the burden is on the Respondent / original Plaintiff to prove that the said amount under the bearer cheque is due and outstanding against the Petitioner / original Defendant.

9                    In the case of *Gowri Shankar Vs. J. L. Babu and Anr* (supra) relied upon by the learned counsel for Respondent / original

Plaintiff, the Andhra Pradesh High Court has confirmed the order passed by the Trial Court on the ground that the Trial Court has formed an opinion that it can by itself undertake the exercise of comparison of the signatures between the admitted and disputed documents. In the instant case, the learned Judge of the Trial Court has not undertaken to carry out such exercise of comparison of the signatures. In the circumstances, the Petitioner / original Defendant left with no other choice but to request the Court by filing application Exhibit 91 to send the disputed cheque for comparison of the alleged signature on the backside portion of the said cheque with his admitted signatures. In the circumstances, the impugned order deserves to be quashed and set aside and the application Exhibit 91 is required to be allowed in terms of its prayer clause. Hence, the following order:

### **ORDER**

- I. The writ petition is hereby allowed.
- II. The order dated 25<sup>th</sup> November, 2016 passed by the 2<sup>nd</sup> Joint Civil Judge Senior Division, Ahmednagar below Exhibit 91 in Regular Civil Suit No.401 of 2013, is hereby quashed and set aside.

- III. The application Exhibit 91 in Regular Civil Suit No.401 of 2013, is hereby allowed in terms of its prayer clause and the disputed cheque shall be sent to the handwriting expert without any delay alongwith the admitted signatures of the Petitioner / original Defendant.
- V. Considering the old pendency of the suit, the Trial Court shall dispose of the suit as expeditiously as possible preferably within a period of three months after receipt of the report of the handwriting expert.
- VI. The writ petition is accordingly disposed of. In the circumstances, there shall be no order as to the costs.

**[ V. K. JADHAV, J. ]**