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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.8470 OF 2016

Raju s/o Sawalaram Bachkar,
Age: 41 years, Occ: Agri.,
R/o. Satara, Tq. & Dist. Aurangabad...PETITIONER

VERSUS

1. Vishnu s/o Ranganath Kulkarni,
Age: 54 years, Occ: Agri.,
R/o. Karmad,
Tq. & Dist. Aurangabad.
2. Sarjerao Shripat Kulkarni,
Age: Major, Occ: Agri.,
R/o. Karmad,
Tq. & Dist. Aurangabad.
3. Baburao Kanhuji Kulkarni,
Age: Major, Occ: Agri.,
R/o. Karmad,
Tq. & Dist. Aurangabad.
4. Ankush Kanhuji Kulkarni,
Age: Major, Occ: Agri.,
R/o. Karmad,
Tq. & Dist. Aurangabad.
5. Kashinath Kanhuji Kulkarni,
Age: Major, Occ: Agri.,
R/o. Karmad,
Tq. & Dist. Aurangabad.
6. Eknath Kanhuji Kulkarni,
Age: Major, Occ: Agri.,
R/o. Karmad,
Tq. & Dist. Aurangabad.
7. Laxman Kanhuji Kulkarni,
Age: Major, Occ: Agri.,

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R/o. Karmad,
Tq. & Dist. Aurangabad.

8. Smt. Dropadabai Pundalik Bankar,
Age: Major, Occ: Agri.,
R/o. Karmad,
Tq. & Dist. Aurangabad.

(Res. Nos. 2 to 8 deleted as per
Hon'ble Court's order
dated 5/10/2017)

9. The State of Maharashtra,
Through Collector, Aurangabad. ..RESPONDENTS

Mr Mahesh R. Sonwane, Advocate for petitioner;
Mr A.P. Gunge, Advocate for respondent No.1;
Mr A.P. Basarkar, A.G.P. for respondent/State

CORAM : NITIN W. SAMBRE, J.

DATE : 5th OCTOBER, 2017

ORAL ORDER :

Learned Counsel for the petitioner seeks permission to delete respondent Nos. 2 to 8. Deletion is permitted at the risk and peril of the petitioner.

2. Deletion be carried out forthwith and as insisted, the matter is taken up for admission.

3. Heard learned Counsel for the petitioner.

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4. In cross examination of the defendant in a proceedings for apportionment of compensation, an application came to be moved by the petitioner at Exhibit-48, seeking reference to the opinion of hand writing expert pursuant to the provisions of Section 45 of the Evidence Act, which came to be rejected on 16th July, 2016 by the order impugned passed by Civil Judge, Senior Division, Aurangabad.

5. It is the case of present petitioner that respondent Nos. 2 to 8 had given no objection in favour of respondent No.1 for the purpose of apportionment of entire compensation in favour of respondent No.1, who is contesting party.

6. While dealing with the said application, learned trial Court recorded the finding that in the say given by respondent No.1, Vishnu, has admitted his signature contrary to deposition which is at Page-59 and 60 of this petition. As such, trial Court proceeded to reject the application.

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7. Learned Counsel for the petitioner, based on the aforesaid submissions, submits that respondent No.1 has denied his signature on various documents and has claimed before trial Court in response to the present application through his lawyer that he is admitting signature on the disputed document.

8. According to him, the order of the trial Court warrants interference.

9. Per contra, learned Counsel for respondent No.1 though does not dispute factual position of authorization given by rest of the respondents in favour of respondent No.1 for withdrawal of the amount, according to him, the order passed is strictly in accordance with the Evidence Act and Code of Civil Procedure, which does not warrant any interference. He would rely upon the reasons given in the order.

10. As present respondent No.1 having disputed

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his signature on various documents, same perhaps has prompted present petition to move the application for referring signature to the hand writing expert.

11. The said can be borne out of the contents of the application and that of the cross examination of respondent No.1.

12. Once respondent No.1 on oath in cross examination has denied his signature, to what extent his admission through his lawyer during hearing of the present application is required to be considered and in the background of denial of signature in the cross examination, is an issue which can be gone into at appropriate stage i.e. at the time of hearing of the suit.

13. However, this Court cannot lost sight of the fact that respondent No.1 in the cross examination on oath has admitted his signatures on which the petitioner is claiming verification of.

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14. The petitioner-plaintiff has every right in law in view of the conduct of respondent No.1 to move such application and seek appropriate relief to that effect. Merely because respondent No.1 orally when through his lawyer has admitted his signature, does not give rise to wash out the statement made on affidavit in the cross examination by denying his signature.

15. It was always open for the present respondent No.1 to file appropriate affidavit before trial Court stating that what was stated by him in the cross examination denying signature was incorrect statement. However, no such steps are being taken by respondent No.1.

16. In the wake of above referred background, if the impugned order is analyzed, learned trial Court has lost sight of the aforesaid eventuality and has proceeded to accept the statement of respondent No.1 made through his lawyer admitting

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his signature, as correct one, which is contrary to his statement made in the cross examination on oath.

17. In view of above, the impugned order dated 16th July, 2016 passed by the Civil Judge, Senior Division, Aurangabad below Exhibit-48 in L.A.R. No. 259 of 2013 is hereby quashed and set aside and the application at Exhibit-48 stands allowed.

18. Writ Petition stands disposed of in above terms.

(NITIN W. SAMBRE, J.)

Tupe