

HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 1037 OF 2016.

Shri Miguel Nazareth,
Major of age,
Resident of House no.71,
Gaonchem Bhatt,
Merces, Ilhas- Goa.

...Petitioner.

V e r s u s

1. M/s Finesse Construction,
A proprietary firm,
Office at S-4, Fatima Chambers,
Panaji, Goa, represented by its
proprietor Mr. Charles De Souza,
major of age, resident of
H.No.272, Merces Waddi,
Opp. Hoble's House, Merces, Goa.
2. Mrs. Rita Falcao,
major of age,
C/o Zacarias Fernandes,
House No.186, Arras Wado,
Nagao, Bardez, Goa.
3. Mrs. Santana Fernandes,
major of age,
c/o John Fernandes,
Near Socorro Panchayat,
Porvorim, Bardez – Goa.
4. Mr. John Fernandes,
major of age,
Near Socorro Panchayat,
Porvorim, Bardez – Goa.
5. Mrs. Socorrina Marcelina
Fernandes, major of age,
C/o Zacarias Fernandes,
House No.186,
Arras Wado, Nagao,
Bardez – Goa.

Deleted in view of order
dated 23.12.2016.

6. Mr. Nevin Gracias,
major of age,
C/o Zacarias Fernandes,
House No.186,
Arras Wado, Nagao,
Bardez – Goa.
7. Mr. Rohan Gracias,
major of age,
C/o Zacarias Fernandes,
House No.186,
Arras Wado, Nagao,
Bardez – Goa.
8. Mr. Sandesh Gracias,
major of age,
C/o Zacarias Fernandes,
House No.186,
Arras Wado, Nagao,
Bardez – Goa.
9. Mrs. Carmina Lourenco,
major of age,
C/o Zacarias Fernandes,
House No.186,
Arras Wado, Nagao,
Bardez – Goa.
10. Mr. Zacarias Fernandes,
major of age, House No.186,
Arras Wado, Nagao,
Bardez – Goa.
11. Mr. Francisco Lourenco,
major of age,
C/o Zacarias Fernandes,
House No.186,
Arras Wado, Nagao,
Bardez – Goa.
12. Mr. Clay Manuel Fernandes,
major of age, 32 years of age,
Resident of H.No.1192,
Segunda Bairro,
St. Cruz, Ilhas, Goa.

Deleted in view of order
Dated 23.12.2016.

...Respondents.

Mr. J. Godinho, Advocate for the petitioner.

Mr. G Naik, Advocate for the respondent no.1.

CORAM: M. S. SONAK, J.
Date:4th May, 2017.

ORAL JUDGMENT:

Heard Mr. J. Godinho, learned Counsel for the petitioner and Mr. G Naik, learned Counsel for the respondent no.1.

2. The petitioner(plaintiff) challenges order dated 16.8.2016 made by the learned Trial Judge directing the petitioner to produce original receipts referred to in paragraph 2 of the application at Exh. D-60 both dated 25.11.2005 to be sent to the Government approved handwriting expert preferably to CFSL, Hyderabad.

3. Mr. Godinho, learned Counsel for the petitioner submits that merely because the learned Trial Judge has power to seek opinion of the expert as to identity of the handwriting in terms of Section 45 of the Indian Evidence Act, 1872, power cannot be exercised unless, circumstances indeed warrant exercise of such power. He submits that, in the present case, the receipts have already been exhibited without any serious challenge on the part of the respondents to such exhibition. He submits that respondents are yet to commence their evidence and upon commencement, the petitioner will have opportunity to demonstrate their case with regard to forgery or manipulation by resort to cross examination. He submits that after

entire evidence is recorded, if the learned Trial Judge is still of the opinion that the receipts in question are required to be referred to an hand writing expert, then, such a course may be permissible to the learned Trial Judge. However, the impugned order has been made prematurely. The impugned order apart from stating that there is dispute with regard to identity of hand writing upon the receipts, contains no reason as to why, at this stage, the receipts need to be referred to the handwriting expert. Mr Godinho submits that such a course will unduly protract the proceedings. He submits that the suit is for Cancellation of Sale Deed, Specific Performance Damages/ Compensation. It is the case of the petitioner that entire consideration except an amount of ₹16,000/- has already been paid to the respondents. For all these reasons, Mr. Godinho, submits that the impugned order be set aside, if necessary, by granting liberty to refer the dispute of the respondents to the opinion of the handwriting expert after all the oral evidence is led by the parties.

4. Mr. G. Naik, learned Counsel for the respondent no.1 submits that the respondents have very clearly disputed the authenticity of the receipts in question. He pointed out that in the written statement the respondents have clearly stated that the receipts dated 25.11.2005 are the xerox copies of one original and in fact, the petitioner is trying to play a fraud on the Court and trying to extract additional ₹50,000/- from the receipts. Mr. G. Naik referred to provisions of Section 45 of the Evidence Act to submit that, Court, in

such circumstance, is empowered to engage services of the handwriting expert and therefore, there is no jurisdictional error in making of the impugned order. Mr. G. Naik, therefore, submits that this petition may be dismissed.

5. The rival contentions now fall for my determination.

6. There is no dispute that when the Court has to form an opinion as to identity of the handwriting, the opinion upon that point of persons specifically skilled in questions as to the identity of the handwriting are relevant facts. Such persons are called as expert. Section 45 makes clear this position. In a given case therefore, it is always open to the Court to seek assistance of such experts to prove or disapprove the signature on the documents, when such fact is in issue. However, this does not mean that merely because there is dispute in the signature or that such fact is in issue, the Court, as the matter of routine, must take the assistance of handwriting expert in terms of Section 45 of the Evidence Act.

7. In the facts of this case, it is true that as contended by the Mr. G. Naik, that the issue of signature on the receipts is a fact in issue. However, it must be noted that petitioner has already concluded his evidence. In the course of such evidence, disputed receipts have already been produced and exhibited. From the records, it does not appear that exhibition of these receipts was objected to. The

respondents are yet to begin their evidence. The respondents in the course of their evidence, are certainly entitled to demonstrate the receipts in question are either forgeries or manipulated documents. The petitioner will also have an opportunity to cross examine the defendants and the defence witnesses.

8. After both the parties conclude their oral evidence and before the evidence of the defence is closed, if the learned Trial Judge is of the opinion that the assistance of the handwriting expert is indeed necessary to determine the issue of forgery and fraud, it is always open to the learned Trial Judge to make appropriate orders in this regard. However, the stage at which the impugned order has been made, indeed, appears to be premature in the facts and circumstances of the present case. There is no point in delaying the proceedings at this stage itself. After the parties have led their oral evidence, it is possible that material on record appears to be sufficient to hold that there are no forgeries or manipulations in the receipts in question. It is also possible that the learned Trial judge is satisfied that there are forgeries or manipulation as alleged. Yet another possibility is that the learned Trial Judge, despite the material on record, deems it appropriate to take assistance of the expert. At that stage, the learned Trial judge can always decide to exercise the powers in terms of Section 45 of the Evidence Act.

9. For the aforesaid reasons, the impugned order is set aside.

However, it is clarified that after conclusion of oral evidence by the parties, the learned Trial Judge is still of the opinion that the receipts in question are required to be referred to the handwriting expert for his opinion, the learned Trial Judge, after giving an opportunity of hearing both the parties, will be at liberty to make appropriate orders in that regard.

10. Rule is accordingly disposed of in the aforesaid terms. There shall be no order as to costs.

11. All concerned to act on the basis of duly authenticated copy of this order.

M. S. SONAK , J.

vn*