

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

WRIT PETITION NO. 9599 OF 2016

Shri Sitaram Genu Lawarde

..Petitioner.

Vs

Shri Bandu Kishn Mengade

.. Respondent

Mr. U.B.Nighot, Advocate for Petitioner.

**CORAM : R.G.KETKAR,J.
DATE : 16/01/2017**

PC:

1. Heard Mr.U.B.Nighot, learned counsel for the petitioner and Mr. , learned counsel for the respondent at length.
2. By this Petition under Article 227 of the Constitution of India, the petitioner/appellant/plaintiff has challenged the Judgment and order dated 28.4.2016 passed by the learned Adhoc District Judge-2, Pune below Exhibit-15 in Regular Civil Suit No.514 of 2014. By that order, the learned District Judge dismissed application Exhibit-15 taken out by the petitioner for sending the receipt dated 21.6.2010 to the handwriting expert to verify the genuineness and the signature of the appellant on it.
3. In support of this petition, Mr. Nighot submitted that Visar Pavti was executed on 17.3.2010 for sell of survey no.223/2, admeasuring 23.13 R, for a consideration of Rs. Six lakhs. The said receipt is signed by petitioner-Sitaram Lawarde. He invited my attention to payment receipt dated 21.6.2010 which is

purportedly signed by Sitaram Lawarde acknowledging receipt of total consideration of Rs.Six lakhs. Out of six lakhs, Rs. 1,50,000/- was received by cheque dated 5.7.2010 and the remaining Rs. 4,50,000/- was received by cash. He submitted that comparison of signatures Sitaram Lawarde appearing on Visar Pavti dated 17.3.2010 and payment receipt dated 21.6.2010 clearly shows that they are not of one and the same person. The suit was dismissed. Aggrieved by that decision, the petitioner preferred appeal and pending the appeal, application Exh.15 was taken out for sending the receipt dated 21.6.2010 to the handwriting expert. By the impugned order, the learned District Judge rejected the application. He, therefore, submitted that as there is dispute as regards genuineness of signature of the petitioner on payment receipt dated 21.6.2010, the learned District Judge ought to have referred the document to the opinion of the handwriting expert for verifying genuineness of signature of the appellant on it.

4. I have considered the submissions advanced by Mr. Nighot. I have also perused the material on record and in particular the impugned order. In Paragraph 7, the learned District Judge observed that the appellant has raised the contention about truthfulness, genuineness and contents of the receipt as also the signature thereon. The said contention cannot be considered at this stage unless the appeal is heard on merits. At the stage of

final argument, the Court can come to the conclusion as to whether the receipt is needed to be sent to the handwriting expert for its opinion or not. As such, at this stage, the application is not tenable. In other words, the learned District Judge has not concluded the issue as regards necessity for sending the document to the handwriting expert for its opinion or not. Even otherwise, Section 73 of the Indian Evidence Act, 1872 empowers the Court to compare the disputed signature with admitted signatures.

5. In view thereof, no case is made out for interfering with the impugned order. Hence, Petition fails and the same is dismissed

(R.G.KETKAR, J.)