

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

**WRIT PETITION No. 8428 OF 2017**

**Niyojit Shri Vinobha Bhawe Smruti  
Sahakari Grahaniirman Sanstha, Solapur ....Petitioner**  
**Vs.**  
**Smt. Rukminibai Nagnath Shahapurkar,  
(died) Through Legal Representative**  
**1A. Smt. Sumanbai Tukaram Shahapurkar .....Respondents**

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Mr. Vishal Kanade i/b. Shrishail Sakhare for Petitioner  
Mr. Surel Shah for Respondents

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**CORAM : M.S. SANKLECHA, J.**  
**FRIDAY, 18<sup>TH</sup> AUGUST, 2017**

**P.C.**

1. This petition under Article 227 of the Constitution of India challenges the order dated 3.5.2017 passed by the District Judge-1, Solapur on an application in a pending appeal.

2. The impugned order dated 3.5.2017, (passed in an appeal filed by the Petitioner) rejected the Petitioner's application to send the disputed and documents admitted by Respondent Nos. 1 to 3 herein to handwriting expert for his opinion as to the genuineness of the same.

3. The Petitioner herein had filed the suit before the Civil Judge, Senior Division, Solapur seeking a specific performance of an agreement, for a declaration that the sale deed executed by the Respondent Nos.1 to 3 in favour of Respondent No.4 is void and an injunction restraining the respondents for interfering in the possession of the Petitioner. The suit was dismissed on 20.7.2013.

4. In the course of hearing before the Trial Court, the issue with regard to the genuineness of the signatures found in the admitted and disputed documents did arise. The Petitioner requested the Learned Judge to invoke section 73 of the Indian Evidence Act and opine on the genuineness of the signature. The Trial Court, on examination of the admitted and disputed documents held that the final conclusion in respect of the genuineness of the signatures could be drawn on examination of other evidence on record. On basis of the above examination, the trial court by an order dated 28.7.2013 dismissed the suit.

5. Being aggrieved by the above order dated 28.7.2013, the Petitioner filed an appeal on 20.8.2013 before the District Judge, Solapur. Thereafter

the appeal itself was taken up for final arguments and was in fact partly heard. It is at that stage, that the Petitioner moved an application to send the disputed documents as well as other documents admitted by the Respondent Nos. 1 to 3 to handwriting expert for his opinion. The impugned order dated 3.5.2017, inter alia, recorded the fact that in the written statement, the Respondent Nos. 1 to 4 had denied the execution of agreement to sell the suit property to Petitioner and also disputed signatures of respondent Nos. 1 to 3 on said agreement to sell. In spite of the above facts, the impugned order records the Petitioner did not move any application before the Trial Court to have the admitted documents referred to Hand Writing Expert to prove the genuineness of signatures of Respondent Nos. 1 to 3. Further, the impugned order records the fact, that no particulars have been set out in the application as to what circumstances precluded it from moving such an application before the trial court. On the contrary, the Petitioner had called upon the Trial Court to invoke section 73 of the Indian Evidence Act and decide the genuineness of the documents. Moreover, no grievance on the above ground was even urged in the appeal memo. It is only after the final arguments were partly over that this application is moved with the malafide intention to delay the appeal.

Thus the impugned order dated 3.5.2017 dismissed the application for opinion of hand writing expert.

6. The Petitioner's grievance to the impugned order is that the trial Court in its order has not given any conclusive finding with regard to the signatures to hold that the documents are genuine or not, but held it to be genuine by relying upon other circumstances. Therefore, it is urged that in the above circumstances, the Petitioner had moved the application before the appeal court to refer the above issue to an Hand Writing Expert for his opinion. This, as it would finally decide the controversy between the parties

7. Mr. Shah, learned counsel for the Respondents submits that the impugned order dated 3.5.2017 does not call for any interference. In fact in support of the impugned order he relies upon the decision of the Apex Court in **Gurdev Singh and Others vs. Mehnga Ram and Another [(1997) 6 Supreme Court Cases 507]** and the decision of the Karnataka High Court in **Girish Vinayakrao Naik vs. Shivamurthappa Sangramappa Khandala [(2001 AIR (Kar) 210)]** wherein evidence obtained from an Hand Writing Expert was sought to be brought as

additional evidence before the Appellate Court was rejected.

8. I find that in the present case, the application to send the documents to the Hand Writing Expert to determine its genuineness was rejected on account of the fact that the appeal itself is filed in 2013, at which time no such ground was taken in the appeal memo. In fact before the trial Court the Petitioner had itself called upon the Trial Court to decide the genuineness of the signatures on the basis of section 73 of the Indian Evidence Act. Moreover the application before the appeal court was made, when the appeal was partly heard i.e. 4 years after having filed the appeal and almost at the fag end of the hearing of the appeal. In the aforesaid facts, the discretion exercised by the impugned order in refusing to call upon for the opinion of the Hand Writing Expert in respect of the admitted and disputed documents cannot be said perverse. Further as observed by the Supreme Court in Gurdev Singh (Supra) in the context of Revisional jurisdiction, that orders passed in respect of sending documents to hand writing expert at the interim stage by the appeal court should not be lightly interfered with. This for the reason that if the order is wrong on merits it would be open to challenge the same in a second appeal after the appellate

decree is passed.

9. However it is contended on behalf of the Appellant that the aforesaid decision relied upon by the Respondents would not apply to the facts of the present case as the facts were different viz. it was in the context of production of additional evidence and that is not the case in the present facts. I am unable to understand how the aforesaid difference in facts would make the impugned order perverse or the observation therein about not interfering at the interim stage lightly, would not apply in the present facts.

10. Therefore, in the above facts there is no reason for me to exercise my supervisory jurisdiction under Article 227 of the Constitution of India to interfere with the view taken in the impugned order dated 3.5.2017 by the Appellate Court. Hence, writ petition is dismissed. No order as to costs.

**[M. S. SANKLECHA, J.]**