

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12557 OF 2017

Vitthal Yadav Talekar

.....Petitioner

V/s.

Laxman Balaji Pingale

....Respondent

* * * *

Ms. Vijaya Ingule a/w. Mr. Rupesh Mandhare i/by. Mr. Sean Wassoodew, Advocate for the petitioner.

Mr. U.B. Nighot, Advocate for the respondent.

CORAM : SANDEEP K. SHINDE, J.

Friday, 5th July, 2019.

P.C. :

1. Heard learned Counsel for the petitioner.
2. The plaintiff is the defendant in the suit for specific performance instituted by the respondent-plaintiff herein. The petitioner filed his written statement contending that, the documents at Exhibits-

44, 45 and 46 are forged and fabricated. He had therefore engaged the services of a handwriting expert to give an opinion on the genuineness of the signatures appearing on Exhibits-44, 45 and 46. The petitioner therefore requested for the inspection of original documents on record by the handwriting expert, Salim Khan. The learned Judge permitted the petitioner to inspect the documents on 24th November, 2016 in open Court on a particular date.

2. It is the petitioner's case that, on 7th December, 2016 his Advocate Mr. Ghadge and the handwriting expert undertook the inspection and examination of documents. It is the petitioner's case that, as per the accepted scientific procedure, inspection of documents involve physical examination of disputed and admitted signatures by the expert under various magnifying gadgets such as self-illuminating magnifiers

and MAC microscopes and photography and inspecting them under different lighting conditions such as U.V. Light, direct light, bleak light and transmitted light.

3. The petitioner, states that on 7th December, 2016 when they were inspecting the documents as there was inadequate light in the court-room, the petitioner's advocate had used mobile torch for viewing the said documents in the Court. It appears, the Court on observing the use of mobile phone concluded that petitioner's advocate and handwriting expert were taking photographs and thus recalled the order dated 24th November, 2016.

4. It is this order dated 24th November 2016, which is under challenge. Upon consideration of facts of the case, what is sought to be challenged in a question of fact. This Court cannot sit in appeal over the order which involves purely a question of fact in writ

jurisdiction. Thus, interference is not called for.

5. The impugned order is non-appealable order and there is no right of Appeal against impugned orders, however, the petitioner may take objection to error, defect or irregularity of the impugned order by filing a Memorandum of Appeal, preferred against the decree in the suit, if the impugned order affects the decision in the Regular Civil Suit.

6. In view of this, the petition is dismissed with no orders as to costs.

(SANDEEP K. SHINDE, J)