

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

WRIT PETITION NO.6199 OF 2021

Balaji s/o Laxmanrao Nalge

Petitioner

Versus

Kashinath Narharrao Pendarkar

Respondent

Mr.V.D.Salunke, advocate for the Petitioner.

CORAM : V.K.JADHAV, J.

DATE : 22nd April, 2021.

PC :

1 Heard learned Counsel for the petitioner at length.

2 Petitioner is the original plaintiff. The petitioner – original plaintiff has instituted the suit bearing RCS No.111/1999 for recovery of amount of Rs.60,000/-. The suit is based upon an agreement (Exhibit-22) dated 12.11.1996. During the pendency of the suit, since Respondent-defendant has denied his signatures over the said document, the petitioner – plaintiff has filed an application Exhibit-49 for sending the specimen signature of the Respondent-defendant along with disputed document Exhibit-22 and the documents admittedly bearing signatures of the

Respondent-defendant to the hand writing expert for comparison.

3 By an order dated 03.12.2020 below Exhibit-49, the trial Court has directed the Respondent-defendant to give his signatures before the Court in the presence of his Counsel and in presence of the plaintiff and further directed the plaintiff to deposit Rs.5000/- in the Court towards fees of the hand writing expert. The trial Court has also directed the hand writing expert to submit his report within one month from the receipt of the order passed below Exhibit-49, as to the disputed signature on the stamp paper (Exhibit-22) encircled in red.

4 In paragraph no. 8 of the order dated 03.12.2020 passed below Exhibit-49, the trial Court has specifically observed that even the defendant proposed some documents which were on record for sending his specimen signatures to the hand writing expert. Even the trial Court has observed that the stamp paper Exhibit-22 needs to be sent to the hand writing expert. However, it appears that the trial Court has forgotten to give directions about sending the disputed documents and admitted documents bearing signatures of the respondent-defendant to the hand writing expert for comparison. Consequently, the petitioner-plaintiff has filed an

application Exhibit-83 under Section 151 of the Code of Civil Procedure for correction of the order passed below Exhibit-49 for sending those documents to the hand writing expert along with specimen signatures of the respondent-defendant for comparison. The petitioner has also filed an application Exhibit-84 for the same relief.

5 The trial Court, by a common order dated 08.03.2021, passed below Exhibit-83 and Exhibit-84, rejected both the applications.

6 It appears that, by an order dated 03.12.2020, the trial Court has allowed the application Exhibit-49 with the observation that along with the specimen signature of the respondent-defendant, the disputed document Exhibit-22 and the admitted documents need to be sent to the hand writing expert for comparison. However, the trial Court has forgotten to mention about the same in the operative part of the order. Unless and until the disputed document along with admitted documents are sent to the hand writing expert along with specimen signatures of the respondent-defendant, the hand writing expert would not be able to form his opinion and the very purpose of the order passed below

Exhibit-49 would get frustrated.

7 In this peculiar position, since the suit is of the year 1999, I do not think that notice to the respondent-defendant is necessary. I do not find any justifiable reason to reject the applications filed by the petitioner at Exhibit-83 and Exhibit-84, respectively. It would be a sheer wastage of time to issue notice to the respondent-defendant to pass the same order.

8 In view of the above, I proceed to pass the following order:

9 Writ Petition is hereby allowed in terms of prayer clauses "B" and "C".

10 Writ Petition is accordingly disposed of.

(V.K.JADHAV)
JUDGE

adb