

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

918 WRIT PETITION NO.590 OF 2021

BHARAT SAMPAT TUPE
VERSUS
SUNIL NAMDEO SHINDE

...

Mr. Rahul Tambe, Advocate for the petitioner.
Mr. S.S. Chapalgaonkar, Advocate for the respondent.

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CORAM : **AVINASH G. GHAROTE, J.**

DATE : **6th August 2021**

ORDER :

1. Heard Mr. Tambe learned Counsel for the petitioner and Mr. Chapalgaonkar, learned Counsel for the respondent.

2. The basic grievance, is that in a suit for specific performance filed by the plaintiff, the defendant has denied the execution of the agreement as well as his signature on the same. The evidence of the plaintiff, is over. An affidavit in lieu of oral evidence on behalf of the defendant has been placed on record, at which point of time defendant filed an application below Exh. 48 requesting that the agreement of sale dated 13.07.2015, be sent to the Government Examiner of Documents, for verification of the signature of the defendant thereupon, in comparison to the admitted signatures, which application has been rejected by the learned trial Court by the impugned order.

3. Learned Counsel for the petitioner submits, that since the execution of the document has been denied, and in view of the evidence of PW-2, the witness to the document, who has denied having seen the document executed, it was necessary for the learned trial Court to refer the agreement to the Government Examiner of Documents, for the purpose of giving an opinion, regarding the signature on the agreement, which is claimed to be that of the defendant, in comparison to the admitted signatures of the defendant. He submits, that merely because, the provisions of Section 73 of the Indian Evidence Act, permit the comparison of the admitted signatures with a disputed one, the Court not being an Expert, ought not to adopt such a procedure. He submits, that even the learned trial Court, in the impugned order, has held, that the opinion of an Handwriting Expert, carries weight.

4. Learned Counsel for the plaintiff, opposes the above contention, by expressing apprehension, that the document in original, should not be permitted to be sent outside the custody of the Court. According to him, the office of the Government Examiner of Documents, is known for the delay in submitting the reports, in respect of documents referred to it. He submits, that in case the defendant is so minded, he can always engage the services of a private Handwriting Expert and request the learned trial Court, to permit such Expert to take photographs of the disputed signatures on the original document and so also the admitted signatures and submit a report who can thereafter be examined and cross-

examined. He submits, that such a course of action, would ensure that the document does not go outside the custody of the Court and therefore, the possibility of it being lost, is ruled out.

5. The learned Counsel for the petitioner, is agreeable to such a course of action, in light of which, the defendant shall make an application within a period of two weeks from today, of the nature indicated above, whereupon in view of the no objection of the learned Counsel for the plaintiff, the learned trial Court shall pass appropriate orders and ensure the further course of action, to be taken in the matter. In that view of the matter, there is no reason to interfere with the impugned order. The petition, is therefore, disposed of in view of the course of action agreed to between the parties as indicated above.

(AVINASH G. GHAROTE, J.)

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