

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

WRIT PETITION NO.8628 OF 2017

LANKABAI BALBHIM KHILE
VERSUS
VAISHALI LAXMAN PARDESHI AND OTHERS

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Advocate for the Petitioner : Shri Kasar Rajendra S.
Advocate for Respondent 1 : Shri Shaikh Ashraf Patel h/f Shri A.P.Avhad

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CORAM: SMT. BHARATI H. DANGRE, J.
DATE :- 31st January, 2022

Per Court:

1. Heard the learned counsel for the petitioner and the respondents.

2. The petitioner is the original plaintiff, who instituted RCS No.75/2013 before the Civil Judge, Senior Division, Ahmednagar, seeking specific performance of the contract, possession of the property and declaration against the respondents/ defendants.

The petitioner/ plaintiff pleaded that respondent No.1/ defendant No.1 is the owner and possessor of the suit property bearing Survey No.3/A/2/2 and out of that, the transaction was entered into with the plaintiff for the land admeasuring 279 square meters. The case of the plaintiff is that respondent No.1 accepted the amount of Rs.5.2 lacs and executed the bond sale deed in favour of the petitioner, in her own handwriting to the extent of the suit property. However, since respondent

No.1 avoided to execute the registered sale deed despite repeated requests, the suit came to be filed.

3. After the examination of the plaintiff and the defendant was over, the plaintiff filed an application vide exhibit 59 seeking permission to adduce additional evidence in respect of the handwriting in the bond paper exhibit 40 on the ground that the defendant had denied her handwriting on the said document. Therefore, it was pleaded that it was necessary to refer the said document exhibit 40 to the handwriting expert for comparison of the handwriting of respondent No.1/ defendant.

This application came to be rejected on 12.06.2017 by the learned Civil Judge, Senior Division, Ahmednagar by recording that the defendant at the very first opportunity i.e. when she filed the Written Statement denied the contents of the bond exhibit 40 to be in her own handwriting. However, though the specific stand in defence was brought on record and the plaintiff was aware of the defendant denying the document at exhibit 40 and her signature, the application vide exhibit 59 was taken out on 07.06.2017 after the plaintiff and the defendant had closed their evidence and the matter was fixed for final argument. Due diligence in prosecuting the remedy and bringing proper witnesses at an appropriate stage when it is permissible, is cited to be the ground for rejection of the said application. The learned Judge further recorded that the plaintiff had closed her evidence by filing the purshis and the

defendant had also adduced her evidence and closed her evidence and when now the matter is posted for final argument of the parties, the application is taken out.

4. True it is that justice should be rendered to both the parties. However, when the plaintiff approached the Court by pleading the specific case in the plaint, the burden is upon the plaintiff to stand on it's own footing and particularly when the defendant specifically denies the assertions in the plaint, the plaintiff has to be careful in choosing the witnesses to be examined. Since in this the plaintiff has missed the bus, though the defendant denied her signature on the document exhibit 40, which is the fulcrum of the suit filed by the plaintiff, the plaintiff took no steps and kept mum till the evidence was closed. The learned Judge has rightly rejected the application since the plaintiff was not diligent in following the process of law available to her and has now to suffer the consequences.

5. Since the impugned order does not suffer from any legal perversity, by upholding the same, the Writ Petition is dismissed.

6. The interim relief granted by this Court stands vacated and the learned Judge is directed to conclude the arguments of the parties within six weeks from today.