

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

WRIT PETITION NO.13323 OF 2022

**VIMAL VENUNATH PATARE
VERSUS
ALKA BHAUSAHEB KHARDE**

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Mr. A.B. Kale, Advocate h/f Mr. Abhishek M. Hajare, Advocate for
Petitioner

Mr. P.B. Shirsat, Advocate h/f Mr. Datta A. Madake, Advocate for
Respondent

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 30th AUGUST, 2023

PER COURT :

1. Petitioner is aggrieved by the order dated 03/10/2022, passed by learned Civil Judge, Senior Division, Shrirampur, below Exhibit-78 in Special Civil Suit No.01/2019, thereby rejecting application filed by the petitioner/plaintiff for forwarding the documents in question to the handwriting expert.

2. Petitioner/plaintiff has filed the suit for specific performance of agreement to sale and perpetual injunction. In the said suit, plaintiff has filed application Exhibit-78 for forwarding the documents i.e. sale deed dated 12/03/1997 and agreement to sale dated 04/04/2005, to the handwriting expert for verification of signatures of defendant, who has denied having signed the said agreement. Trial Court has rejected the said application observing

that, on the basis of complaint lodged by defendant claiming that agreement to sale dated 04/04/2005 is a forged and fabricated document, Crime No.273/2019 was registered and after filing of charge-sheet, the case is numbered as R.C.C. No.15/2022. During the course of investigation of said crime, documents (including agreement to sale dated 04/04/2005) were sent to the handwriting expert for examination and his report is also received. The said report was called in the present matter from the Criminal Court, which is at Exhibit-76A. Trial Court, therefore, was of the view that, since the documents in question were already sent for examination and report/opinion of the expert is already received, it was incumbent on the part of plaintiff to explain as to why the documents are required to be sent again for examination by the expert.

3. Learned advocate for petitioner assailed the impugned order contending that the sale deed dated 12/03/1997 was not forwarded for comparison, when the agreement to sale dated 04/04/2005 and the other documents were sent during the course of investigation. That by itself cannot be a ground to again forward the said documents for handwriting expert's opinion, since the handwriting expert's opinion on the agreement to sale dated 04/04/2005, is already on record.

4. Trial Court has kept the remedy to the petitioner open by observing that, *"At this juncture, it would not be out of place to mention here that, if at all, such a need or necessity creeps in, at a subsequent stage, the opinion of the expert can be called at any time. However, for that purpose the matter cannot be held up without adducing evidence by the plaintiff"*.

5. Considering the facts of the present case, documents placed on record and the impugned order, this Court is of the view that, since the remedy of petitioner to seek forwarding of said documents to the handwriting expert, in case such need arises at a subsequent stage, is already kept open, the trial Court has not committed any error of jurisdiction or error of law in passing the impugned order. There is no illegality or perversity in the order impugned in present petition. Writ petition being devoid of merit is dismissed.

6. Petitioner is at liberty to prove the handwriting expert's report on record.

(NITIN B. SURYAWANSHI, J.)