

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

**WRIT PETITION NO. 2051 OF 2023**

Jagdish Kantilal Shah and others .. Petitioners

**Versus**

Gajendra Dattatray Salunkhe .. Respondent

Shri Sudhakar T. Mahajan, Advocate for the Petitioners.

**CORAM : SHARMILA U. DESHMUKH, J.  
DATE : 21ST FEBRUARY, 2023.**

**FINAL ORDER :**

. Heard.

2. By this petition, challenge is to the order dated 11.06.2022 rejecting the petitioners' application for referring the agreement of sale, vakalatnama signed by the petitioners, written statement signed by the petitioners in the original suit to the hand writing expert for verifying signatures of the appellants/petitioners.

3. Spl. C. S. No. 14 of 2014 was instituted by the respondent-plaintiff seeking a decree of specific performance of agreement of sale. It was case of the petitioners/defendants that the signatures on the agreement of sale were forged and inspite of this specific plea put forward by the defendants, no evidence was led before the Trial Court to substantiate their stand. By

judgment and decree dated 01<sup>st</sup> August, 2016, the suit was decreed and the petitioners herein were directed to execute sale deed in respect of suit property as against which appeal was filed bearing R.C.A. No. 47 of 2016. An application came to be filed under Section 73 of the Indian Evidence Act dated 04<sup>th</sup> October, 2021 seeking to forward the agreement of sale and other documents to the hand writing expert.

4. The petitioners are seeking to produce additional evidence in the appellate Court and as such same is governed by the provisions of Order XLI Rule 27 of the Code of Civil Procedure (for short 'Code'). Rule 27 of the Order XLI of the Code sets out the circumstances in which additional evidence can be permitted to be produced before the Appellate Court. In the present case, it is an admitted position that the petitioners had disputed their signatures and had in fact set up a specific case that the signatures on the agreement of sale are forged and inspite of that have chosen not to examine any witness and produce any evidence in that respect. At the appellate stage, petitioners are now seeking to produce additional evidence and there is no material on record to demonstrate that the case of the petitioners falls under any of the circumstances contemplated under Order 41 Rule 27 of the Code. It is also required to be noted that the suit has been decreed and the petitioners have been directed to execute the sale deed. At the appellate stage, now the petitioners want to send the documents to the hand writing expert and create evidence, which in my opinion amounts filling up the

lacuna in their evidence.

5. In the light of the above, such a course cannot be permitted in the appellate proceeding. Petition being devoid of merits stands dismissed. No costs.

**[SHARMILA U. DESHMUKH, J.]**

*bsb/Feb. 23*