

SA Pathan

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.9079 OF 2022

Suresh Aappaso Koli & Anr ... Petitioners

V/s.

Chandrakant Namdev Mane ... Respondent

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Mr. R. M. Haridas a/w Mr. Mohan C Kumbhar i/by Mr.
Dilip Shinde, for petitioners.

None for the respondent.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 20, 2023

P.C.:

1. Despite service through Court, none appears for respondent either personally or through his Advocate.
2. Rule. Rule is made returnable forthwith.
3. By this writ petition under Article 227 of the Constitution of India, the petitioner-original defendant is challenging the order dated 17 February 2022 passed by the Trial Court refusing to send agreement to sale in a suit for specific performance to the hand writing expert.
4. The respondent is original plaintiff who has filed Special Civil Suit No.209 of 2015 for specific performance of agreement dated 20 October 2012 after accepting balance of consideration of Rs.6 lakh. A consequential relief of possession is also sought.

Additional relief to declaration of sale deed executed by defendant No.1 in favour of defendant Nos.4 to 5 to be declared as null and void is also sought.

5. According to plaintiff, on 20 October 2012, the plaintiff has paid defendant No.1 Rs.2,50,000/- by cheque and paid additional amount of Rs.2,50,000/- towards earnest amount. According to him, the total consideration was fixed Rs.26 lakh out of which Rs.20 lakh was paid by cash and cheques. Remaining Rs.6 lakh is balance of consideration amount.

6. The applicant contested the suit by filing the written statement. In the written statement, the petitioner raised a defence that the plaintiff is doing money lending business, he never accepted any amount from the plaintiff nor has issued any receipt in his favour. In paragraphs 7 and 8, the defendants raised a specific defence alleging that the agreement in question i.e. agreement dated 20 October 2012 was never executed.

7. The applicant filed an application for sending the agreement in question to the hand writing expert. The respondent contesting the application; however, in paragraph 3, it is stated that the plaintiff has no objection to send the agreement to hand writing expert after reference to Forensic Examination.

8. The Trial Court by impugned order rejected the application by compelling the signatures in exercise of power conferred under Section 73 of the Evidence Act, 1872.

9. It is well settled that ordinarily, the Court shall not act as hand writing expert when there is serious dispute regarding

signature on an agreement and if the Court is satisfied that the dispute raised s bona fide, it would in the interest of justice that the document be sent to expert instead of Court acting as expert.

10. In the facts and circumstances of the case, I find that the grievance is raised by the applicant is bona fide; hence, considering no objection tendered by the plaintiff, the Trial Court ought to have referred the agreement dated 20 October 2012 to hand writing expert.

11. On over all considering of the aforesaid facts, following order is passed:

a) The impugned order dated 17 February 2022 passed by the 8th Joint Civil Judge, Senior Division, Sangli below Exhibit 114 in Special Civil Suit No.209 of 2015 is quashed and set aside.

b) The application below Exhibit 114 in Special Civil Suit No.209 of 2015 is allowed.

12. Rule is made absolute in terms of prayer clauses (a) and (b).

(AMIT BORKAR, J.)