



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 15338 OF 2023

Naryan Babasaheb Dange

VERSUS

Rambhau Laxman Turkane And Others

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Ms. Mayuri Deshmukh h/f Mr. S. S. Chapalgaonkar,
Advocate for the Petitioner

Mr. R. A. Tambe, Advocate for Respondents

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CORAM : R.M. JOSHI, J

DATE : JULY 11, 2024

PER COURT :

1. By consent of both sides, heard finally at admission stage.

2. Petitioner is Plaintiff in Spl. C. S. No. 10/2022 which has been filed for specific performance of contract on the basis of agreement to sale dated 20.01.2022. Petitioner is aggrieved by order passed below Exh. 24 whereby the Trial Court has allowed application filed by Defendants for seeking opinion of handwriting expert to ascertain the signature and thumb impression on the disputed document.

3. Learned Counsel for the Petitioner/Plaintiff objects the stage at which application has been

allowed. It is her contention that the opinion of the handwriting expert can only be a corroborative evidence and parties are required to prove their case by leading substantial evidence.

4. Learned Counsel for Respondents/Defendants submitted that once dispute is raised by the Defendants about execution of the document by them, no fault can be found in order of sending the disputed document to handwriting expert. In support of his submissions, he places reliance on the judgment of this Court in case of Salim B. Narangi vs. State of Goa and Others, 2012 SCC OnLine Bom 1827.

5. This Court finds substance in the contention of learned Counsel for Petitioner that the opinion of the handwriting expert would be a corroborative piece of evidence. It is obligation of the parties to lead substantial evidence first and unless this exercise is done, there is no propriety in entertaining application for seeking opinion of the expert of handwriting or thumb impression, as the case may be.

6. As far as the judgment cited supra, it appears

that in the said case application for scientific investigation of the disputed signature is rejected after evidence has begun. This Court has reversed the said order in that circumstance. Moreover, it appears that there is no question with regard to the signature of deceased person. In view of the basic difference in the factual matrix in both cases, the Respondents will not get any aid from the said judgment.

7. Suffice it to say that it is not a proper stage for allowing application for referring the disputed document to the handwriting expert. However, it is clarified that it will be open for the Defendants to move an application for this purpose at appropriate stage. The Trial Court to decide the said application on merits of the case and in accordance with law and not only for the reason that this Court has observed that it is open for the Defendants to make such application.

8. In view of the above, Petition stands allowed. Impugned order dated 18.10.2023 is set aside.

(R. M. JOSHI, J.)