



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2889 OF 2009

Pravin Shrirang Sable

VERSUS

Moiz Sadique Hussain And Others

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Advocate for Petitioner : Mr. S R Deshpande

Advocate for Resp 3 : Mr. Mohd Aseem Mohd Abdul Kaleem

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WITH

CIVIL APPLICATION NO. 13942 OF 2024 IN WP/2889/2009

CORAM : S. G. CHAPALGAONKAR, J.

Dated : June 30, 2025

PER COURT :-

1. Present writ petition takes exception to the order dated 7.3.2009 passed by the Civil Judge S.D. Aurangabad, below Exhibit-203 in Special Civil Suit No.239 of 2003, by which prayer of the petitioner to refer disputed signature of respondent no.1 to hand writing expert for comparison with admitted signature has been declined.

2. Mr. Deshpande, learned counsel appearing for petitioner submits that, petitioner filed suit for specific performance of contract on the basis of agreement to sale dated 22.1.1999 executed by respondent no.1. Respondent no.1 is now settled in United States of America. He recorded

his evidence in trial and denied signatures on Exhibit-69 i.e. agreement to sale dated 22.1.1999 relied by plaintiff. Mr. Deshpande would submit that respondent no.1 has admitted his signatures on various documents, which are exhibited and admitted in evidence, therefore, there is sufficient material to compare original signature of respondent no.1 with disputed signature. According to Mr. Deshpande, although, the Court possesses powers to compare the signature under section 73 of the Indian Evidence Act, it is always advisable to have expert's opinion so as to resolve controversy between the parties. Mr. Deshpande submits that learned Trial Court rejected petitioner's application only on the ground that it is filed at belated stage i.e. when matter was posted for arguments.

3. It can be observed that cross-examination of respondent no.1 was over on 20.12.2008. Present application Exhibit-203 has been filed on 18.2.2009. During cross-examination, respondent no.1 denied signatures on agreement to sale dated 22.1.1999, which is at Exhibit 69. In that view of the matter, only because matter was at the final stage, application for referring document for comparison of signature could not have been rejected, particularly, when it has bearing on issue involved in the suit.

4. In the present case, respondent no.1 has admitted signatures on various documents which are part of record. Therefore, comparison of the admitted signatures with the disputed signature through an expert would assist the Court to reach just conclusion.

5. In that view of the matter, this Court finds that Trial Court committed error of jurisdiction while rejecting the application Exhibit-203 giving reason of stage of suit.

6. In the result, writ petition is **allowed** in terms of prayer clause and 'C'.

7. Learned Trial Court shall pass further necessary order for getting report from the expert on deposit of amount by petitioner and endeavor to decide the suit expeditiously, and in any case, within a period of one year from the date of receipt of Expert's report.

8. Writ Petition stands **disposed of**. Pending **civil application**, if any, also stands **disposed off**.

(S. G. CHAPALGAONKAR, J.)

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