

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2169 OF 2025

Sharp Business Systems (India) Ltd. and
anr.

...Petitioners

Versus

Pankaj Arvind Nadgauda

...Respondent

Mr. A. A. Devkhile, for the Petitioners.

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KULKARNI

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CORAM: N. J. JAMADAR, J.
DATED: 25th FEBRUARY, 2025

Order:-

1. Heard the learned Counsel for the petitioners.
2. The challenge in this petition is to an order dated 2nd January, 2024 passed by the learned Civil Judge, Pune, on an application preferred by the petitioners seeking permission to hand over the mobile phone handset which, according to the petitioners, contains data or messages allegedly forwarded by the plaintiff and then appoint an expert to examine the said mobile phone handset and submit a report.
3. The suit has been instituted for recovery of a sum of Rs.42,29,060/- towards the arrears of licence fee and other charges for the alleged unlawful termination of the Leave and

Licence Agreement. In the said suit, the defendant – petitioner has taken a defence that on account of the alleged obscene and derogatory messages forwarded by the plaintiff, the Leave and Licence Agreement was terminated.

4. By the impugned order, the learned Civil Judge was persuaded to reject the application observing that the plaintiff has already placed the alleged text messages alongwith 65B certificate and eventually the said text messages have been marked as 94, 94.A and 94.B. Moreover, the suit is for recovery of money. Examination of a technical expert was not warranted for a just decision of the case.

5. The learned Counsel for the petitioners submitted that a specific ground has been raised in the written statement that the plaintiff had forwarded the said derogatory and offensive messages. Therefore, the Leave and Licence Agreement was terminated. The examination of the technical expert was warranted to establish the said fact. Reliance was placed on a decision of the Supreme Court in the case of *Anvar P. V. vs. P. K. Basheer and ors.*¹

1 (2014) 11 SCR 399.

6. I do not find any infirmity in the impugned order. The text messages which the defendant had allegedly received were tendered and have been duly marked in evidence. By preferring the instant application, the defendant wanted to tender the mobile phone handset and, thereafter, wanted the Court to send the same to the technical expert for forensic analysis and call for a report thereon. The said application was made after the evidence of the defendant was also substantially recorded.

7. The contract was terminated on 9th July, 2012. The messages preceded the termination. The suit has been instituted in the year 2012. For all these years, the mobile phone handset has been in the custody of the defendants. Thus, offering to tender the mobile phone handset of the defendant, at that stage, and thereafter calling upon the analysis of data therein, was wholly inappropriate. Had the said mobile phone handset been tendered alongwith the pleading and documents, different consideration would have come into play. In these circumstances, the learned Civil Judge was justified in declining to entertain the prayer.

8. The petition stand dismissed.

[N. J. JAMADAR, J.]