

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.1131 OF 2022

(Lalita Devrao Thakare and others Vs. Sumandas Anandrao Amborkar and others)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Mr. V. N. Morande, Advocate for Petitioners.
None for Respondents.

CORAM: R. M. JOSHI, J.

DATE: 17th JUNE, 2025.

1. This petition takes exception to the order passed below Exh.133 dated 01.01.2022 in Regular Civil Suit No.44/2014, whereby the application filed by the plaintiff for sending the disputed document i.e. agreement to sale to the handwriting expert along with the admitted signature of the defendant, is rejected.

2. Respondents – original defendants are duly served with a notice of final hearing of this petition. None present for the respondents which indicate that they are not interested in opposing the petition.

3. Learned Counsel for the petitioner has drawn attention of the Court to relevant facts which indicate that the suit has been filed by the petitioner – plaintiff for specific performance of contract relying upon the agreement to sale dated 22.04.2007. Defendants have disputed the execution of the said document. After framing of issue, plaintiff led evidence. Evidence of the plaintiff was closed on 25.03.2021. It is his contention that thereafter the

defendant in his cross-examination has denied execution of the document in question on oath. According to him, on that day cause of action accrues for the plaintiff to move an application before the learned trial Court for comparison of the admitted signatures and disputed one.

4. An application Exh.129 moved on 01.04.2021 for comparison of signatures by Court came to be rejected by the learned trial Court on 14.08.2021. Since by the said application request of comparison of the signature by Court is rejected, plaintiff moved application Exh.133 on the next date of hearing i.e. on 24.09.2021. This application is opposed by the defendant. The learned trial Court rejected the application essentially on the ground that the application has been moved belatedly. Learned Counsel for the petitioner submits that except for just solitary reason, there is no other reason recorded by the learned trial Court for rejecting the same.

5. The contentions of the petitioner have gone unchallenged. Perusal of the impugned order indicates solely on the ground of alleged delay, the application has been rejected. There is no observation made by the learned trial Court that the comparison of signatures by expert and his opinion is irrelevant. In any case, no such observation could have been made by the learned trial Court for the reason that suit is for the specific performance of the contract on the basis of the agreement to sale dated 20.04.2007 and execution of agreement is denied by defendants.

6. In so far as the alleged delay is concerned, the facts on record indicate that after the closing of evidence of the defendant wherein the dispute is made on oath with regard to the execution of the agreement to sale, application Exh.129 is moved for comparison of the signature by Court. Since this application came to be rejected on 14.08.2021 application Exh.133 was filed on record. The learned trial Court has failed to take into consideration these material facts. From the said facts it cannot be said that there is any delay on the part of the plaintiff to move the application in question and when the relevancy of the application is not in dispute, there would be no justification for rejection thereof.

7. In view of the above, impugned order cannot sustain and hence stands set aside. Application Exh.133 stands allowed. The learned trial Court is directed to pass appropriate order sending the disputed document containing disputed signature and admitted signature of the defendant to the competent Hand Writing Expert. The expenses required for this purpose shall be borne by the plaintiff.

8. Petition stand, allowed in above terms.

(R. M. JOSHI, J.)