



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.1031 OF 2024

Savita Umesh Mundada and others

..Petitioners

Vs.

Naresh Rupla Chaudhari and anr.

..Respondents

Mr.Girish Rane, Advocate for petitioners

Mr.A.S.Bajaj, Advocate h/f. Mr.Abhijit Choudhari, Advocate for
respondent no.1

CORAM : AJIT B. KADETHANKAR, J.
DATE : MARCH 27, 2026

ORAL JUDGMENT :-

Rule. Rule made returnable forthwith. Heard finally with
the consent of learned counsel for the parties.

2. Special Civil Suit No.11 of 2016 came to be filed by the
present petitioners against the respondent in the Court of learned Civil
Judge, Senior Division, Amalner for recovery of an amount of
Rs.52,07,000/- along with interest at the rate of 18% per annum. The
respondent/defendant caused their appearance in the suit and filed
their written statement. Subsequently, the evidence was opened and
the petitioners/plaintiffs completed their evidence. Thereafter, the
respondent/defendant also filed his examination-in-chief. The
examination-in-chief was sworn and verified before the learned Judge

of the Court. Subsequently, the defendant denied everything including his signature on the examination-in-chief, written statement and all other documents even including the Vakalatnama. This constrained the petitioners/plaintiffs to file an application under Section 340(1) r/w. Section 195(1)(c) of the Code of Criminal Procedure. The respondent/defendant objected the said application. The application was supported with affidavit filed on behalf of the petitioners. Learned Civil Judge, Senior Division, Amalner, on 27.02.2023 passed an order which reads thus:-

(1) Today, in compliance of the order Exh.64 in Special Civil Suit No.11 of 2016, the disputed documents in the present petition are being sent to Hand Writing Expert for their opinion. Therefore, it is not proper to decide this application till receipt of the report of Hand Writing Expert. Hence, this petition be kept awaited for report. The applicant can file copy of that report in the present petition.

3. Mr.Rane, learned counsel for the petitioners/plaintiffs, would submit that learned Civil Judge, Senior Division, Amalner, kept the proceedings under Section 340(1) r/w. Section 195(1)(c) of Cr.P.C. pending for want of compliance of the order passed on application below (Exh.64). The said application was filed seeking signature verification of the defendants. Mr. Rane, learned counsel for the

applicants, would submit that the allegations of under Section 340(1) r/w. Section 195(1)(c) of Cr.P.C. are evident from the record of the Court itself. He would take me to page 28 of the Writ Petition compilation, wherein, in the examination-in-chief, the defendant deposed that the contents of the examination-in-chief were drafted on the instructions and introduction given by him, it was read over and explained to him. Further, he has asserted that the said examination-in-chief is true and correct and bears his own signature. Learned counsel for the petitioners submits that as such, it shows that the proceedings under Section under Section 340(1) of Cr.P.C. and Section 195 of Cr.P.C. ought to have been proceeded with by the learned trial court without any more waiting for the handwriting expert's opinion. He would submit that the impugned order was passed on 27.02.2023 and as yet, the said report is not received. Then, he would again point out another order dated 10.07.2023 passed by the learned Civil Judge, Senior Division, whereby adhering to the earlier order, learned Civil Judge departed from proceeding with the process under Sections 340 and 195 of Cr.P.C. As such, learned counsel for the petitioners prays to allow the Writ Petition and to direct learned Civil Judge, Senior Division, Amalner, to proceed in accordance with Section 340 and Section 195 of Cr.P.C. against the erring defendants.

4. Mr.Bajaj, learned counsel for the respondent no.1/defendant, would advocate the order under challenge. He would submit that in any case, the handwriting expert's opinion would be beneficial to resolve the controversy raised by the petitioners. He would submit that therefore, the trial court cannot be said to have erred in not proceeding with the process under Section 340 and 195 of Cr.P.C. till receipt of the report of the handwriting expert.

5. Heard learned counsel for the parties extensively. The core contention of Mr.Rane, learned counsel for the petitioners is about the record of the trial court and particularly at Exh.54, which is the examination-in-chief tendered by the respondent/defendant. He would submit that the defendant has before the learned Judge verified the contents of the examination-in-chief and in maximum clear words has accepted that it was drafted at his instructions and introduction; was read over and explained to him; it was true and correct and bears his signature. He would submit that in view of this and the further summersault given by the defendant to such responsible statement before a Judicial Officer, it is not proper on the part of the trial court to wait for the report from the handwriting expert.

6. Things as it appear that there is sufficient material before the trial court to take proceedings further under 340 and 195 of Cr.P.C. against the petitioner solely on the basis of the examination-in-chief and cross-examination of the defendant which is part of record in the trial court. Keeping this process pending till receipt of the handwriting expert's opinion would in fact frustrate the very object of the special provisions under Sections 340 and 195 of Cr.P.C. I find no prudent logic in passing the order dated 27.02.2023 by the learned trial court. I am of the considered view that the order must go.

7. Hence, the following order:-

(i) The Writ Petition stands allowed.

(ii) Impugned order dated 27.02.2023, passed by learned Civil Judge, Senior Division, Amalner, Dist. Jalgaon, is quashed and set aside.

(iii) The trial court shall proceed in furtherance of Section 340 and 195 of the Code of Criminal Procedure in accordance with law and pursuant to the application filed by the petitioners.

(iv) Rule is made absolute accordingly.

(v) Needless to mention, the observations made by this court are to the extent of the present Writ Petition. It is also clarified that the observations made by this court will not influence the merit of the respective parties in the trial.

[AJIT B. KADETHANKAR, J.]

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