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

WRIT PETITION NO. 6809 OF 2015

- 1 YESHWANT DEVIDASRAO BHORE,
Age : 58 years, Occ : Agri,
R/o Mahaveer Chowk, Nanded.
- 2 Vinay S/o Yashwant Bhore,
Age : 25 years, Occ : Education,
R/o 144, South 3rd Street Apartment,
420 Sanjose California,
USA 95112.
Through GPA
Yeshwant Devidasrao Bhore,
R/o Mahaveer Chowk, Nanded.

...PETITIONERS

-VERSUS-

- 1 VINODKUMAR VITHALRAO SHIRRAMWAR,
Age : 48 years, Occ : Business (Developer),
R/o Yeshwantnagar, Nanded.
- 2 Saleem Hashambhai Hirani,
Age ; 49 years, Occ : Business (Developer),
R/o Khaoja Colony, Nanded.

...RESPONDENTS

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Advocate for Petitioners : Shri Surwase B.R.

Advocate for Respondents : Shri Mantri Ramesh R..

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 07th September, 2015

Oral Judgment:

1 Rule. Rule made returnable forthwith and heard finally by the
consent of the parties.

2 The Petitioners are aggrieved by the order dated 27.02.2015
passed by the learned Civil Judge, Senior Division, Nanded in Special Civil
Suit No.129/2010 by which, the application Exhibit-153 filed by the
Petitioners has been rejected.

3 The undisputed factors emerging from this case are as under:-

- (a) Special Civil Suit No.129/2010 preferred by the
Respondents/ Plaintiffs was decreed by the Trial Court.
- (b) The Petitioners / Defendants preferred First Appeal
Nos.961/2012 and 962/2012 before this Court.
- (c) By the judgment dated 13.11.2013, this Court modified the
decree.
- (d) An application Exhibit-153 was filed by the Petitioners herein
proposing seven issues.
- (e) The Respondents opposed the said application by filing their
reply below Exhibit-156.

4 The contention of the Petitioners is that in an application

under Sections 27 and 28 of the Specific Relief Act, 1963, the Trial Court is required to deal with all objections raised by the Defendants. Whether, the Decree Holder has failed to comply with the decree and therefore, whether, the contract can be said to have been rescinded, is an issue raised by the Petitioners.

5 The Petitioners in support of their objections have raised the following issues:-

- (a) Whether, the amount due to be paid to the Petitioners was offered/ tendered to them within the time frame as directed by this Court?
- (b) Whether, the amount was deposited before the competent court within two weeks after the expiry of four weeks in which the amount was to be tendered to the Petitioners?
- (c) Whether, the amount deposited in the Court suffers a shortfall by Rs.8000/-?
- (d) Whether, the postal remark “out of station” would amount to proper service or improper service to the extent of tendering the amount to the Petitioners?
- (e) Whether, proper stamp duties/ registration charges have been paid?

6 The submission of the Petitioners is that all these issues would require recording of evidence to establish their objections. However, by the impugned order dated 27.02.2015, the Trial Court has rejected the application Exhibit-153 thereby, depriving the Petitioners of an opportunity to lead evidence and establish their contentions before the Trial Court.

7 Shri Mantri, learned Advocate for the Respondents, who are original Plaintiffs in Special Civil Suit No.129/2010, submits as under:-

- (a) The date of posting the envelope with the Post Department containing the Demand Draft is dated 07.12.2013 at 14:56 hours and the said issue is not disputed.
- (b) Whether, the postal envelope sent by the Respondents can be said to have been served on the Petitioners or not, in the light of the postal remark “out of station”, is also a matter to be interpreted by the Trial Court.
- (c) Whether, the Respondents have deposited the amount before the Trial Court as per the decree passed by this Court, is also a matter to be perused and decided by the Trial Court since the dates are evident from the record before the Trial Court.
- (d) Whether, the amount to be paid to the Petitioners and deposited before the Trial Court is equal to the amount as

directed or whether, there is a shortfall, is also a matter of record and to be considered by the Trial Court.

- (e) Whether, stamp duties/ registration charges were deposited or not and whether, the Respondents sought the consent of the Petitioners to cause registration in the competent office, is again a matter of record.

8 Shri Mantri, therefore, submits that in the light of the admitted position as above and in the light of the documents on record before the Trial Court which would speak louder than words, the oral evidence is not required. He draws my attention to the conclusions drawn by the Trial Court in the impugned order wherein it has concluded that all these contentions are based on certain documents which are admitted before the Trial Court. The Trial Court has concluded that no oral evidence is required for the said purpose. The Trial Court has also concluded that the issues raised by the Petitioners herein regarding rescission of contract will also be gone into by the Trial Court on the basis of the record. Shri Mantri, therefore, prays that this petition be dismissed with costs.

9 I have considered the submissions of the learned Advocates as have been recorded herein above. They have taken me through the petition paper book.

10 I have taken into account the contentions of the Petitioners with due circumspection. The Petitioners were specifically called upon to indicate as to which is the issue that would require recording of oral evidence in the light of the objections raised by the Petitioners. The Petitioners besides repeating their contentions, could not point out a specific issue which could be said to be disputed and which would require recording of oral evidence so as to prove the said issue.

11 Notwithstanding the above, I am also of the view that the aspects raised by the Petitioners in the application Exhibit-153 are all based upon an admitted position and especially in the light of the submissions of the Respondents which have been recorded herein above. The Trial Court was, therefore, right in concluding that the respective stands taken by the rival sides and the documents admitted on record, would enable the Trial Court to decide the controversy on the basis of the said documents available and the fact of depositing the money before the Trial Court.

12 In the light of the above, I am not convinced that the impugned order dated 27.02.2015 could be termed as being perverse or erroneous.

13 Shri Mantri has submitted that though this Court did not grant any interim protection to the Petitioners, sheerly on the basis of the pendency of this petition, Special Civil Suit No.129/2010 could not be proceeded with after the passing of the impugned order dated 27.02.2015. He, therefore, prays for costs.

14 This petition is dismissed with costs. The Petitioners shall pay an amount of Rs.1000/- (Rupees One Thousand only) each to the two Respondents by depositing the same (in all Rs.2000/-) before the Trial Court in Special Civil Suit No.129/2010 on or before 21.09.2015.

15 Rule is discharged.

(RAVINDRA V. GHUGE, J.)