

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION St.NO.1374 OF 2015**

Sangeeta Ankush Mane

..Petitioner

Vs.

Laxman Genba Londhe & Ors.

..Respondents

Mr. Pradeep J. Thorat for the Petitioner

CORAM : R. M. SAVANT, J.

DATE : 1st SEPTEMBER, 2015

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 29-10-2014 passed by the Learned District Judge-3, Satara, by which order, the application being Misc Civil Application No.84 of 2011 filed by the Petitioner for setting aside the decree passed by the Lower Appellate Court dated 28-8-2007, came to be rejected.

2 The Appeal in question was filed by the Plaintiff i.e. the Original Appellant being Regular Civil Appeal No.180 of 2002. The Suit being Special Civil Suit No.293 of 1990 was filed for specific performance of the contract dated 1-1-1988, against the original Defendant No.1 Chandrakant Babu Mane who has expired and whose heirs are now on record and who are the Respondents to the instant Petition. The suit for specific performance came to be dismissed by the Trial Court by judgment and order dated 10-12-1993

against which the Plaintiff filed the said Regular Civil Appeal No.180 of 2002 and the Suit came to be decreed at the appellate stage on 28-8-2007 and the specific performance of the agreement dated 1-1-1988 came to be granted by the Lower Appellate Court. The instant application for setting aside the exparte decree came to be filed on 7-4-2011 and the ground for delay that was occasioned was that the Applicant i.e. Petitioner herein had acquired knowledge of the said decree in the course of some revenue proceedings. It was the case of the Applicant that she was a third party purchaser who was not aware of the pendency of the Suit and therefore was not aware of the decree being passed at the appellate stage granting specific performance. The said application was replied to on behalf of the original Plaintiff / original Appellant. The case made out was sought to be questioned. It was the case of the original Plaintiff that the application has been merely filed to delay the fruits of the decree being enjoyed by the Plaintiff, especially having regard to the fact that the Plaintiff had filed Special Darkhast No.93 of 2001 for execution of the said decree.

3 In so far as the Applicant i.e. the Petitioner herein is concerned, she claims to have purchased the property in question from one Sopan Sargar on 16-12-2010 prior to which the said property had change hands on a couple of occasions from the original Defendant which transactions are reflected in the impugned order. The Lower Appellate Court considered the said

application for setting aside the decree. In so far as third party i.e. Applicant is concerned, the Lower Appellate Court was of the view that the Suit being one for specific performance between the Plaintiff and the Defendants, the Applicant as third party was not concerned with the same. The Lower Appellate Court was of the view that since the Applicant is not a purchaser prior to the filing of the Suit the provisions of Section 19(b) of the Specific Relief would not apply and since the Applicant is a purchaser pendant lite, the provisions of Section 52 of the Transfer of Property Act would apply and the Applicant would therefore be bound by the decree passed by the Lower Appellate Court. The Lower Appellate Court has thereafter considered the manner in which the property has changed hands and ultimately coming to the hands of the Applicant i.e. the Petitioner herein. The Lower Appellate Court expressed a doubt about the manner in which the transactions have taken place ultimately leading to the transaction in favour of the Petitioner especially having regard to the fact that the Applicant is the sister-in-law i.e. the brother's wife of the original Defendant. The Lower Appellate Court having regard to the said facts concluded that the application is merely filed to delay the execution of the decree through the medium of the Applicant.

4 It is the submission of the Learned Counsel for the Petitioner i.e. the Applicant that the Lower Appellate court has erred in observing that the application is not maintainable as the transferee pendant lite is entitled to

apply for setting aside the ex parte decree which affects the said party, in support of which contention reliance was sought to be placed on the judgment of the Apex Court in the matter of **Raj Kumar Vs. Sardarilal & ors.**¹ It is the submission of the Learned Counsel that the Lower Appellate Court has erred in rejecting the application on the ground that it is not maintainable.

5 In my view, it is not possible to accept the said contentions of the Learned Counsel for the Petitioner. In my view, the order passed by the Lower Appellate Court is being misconstrued by the Learned Counsel for the Petitioner, the Lower Appellate Court as can be seen from the impugned order has not rejected the application on the ground that it is not maintainable but has rejected it on the ground that no case for setting aside the decree is made out by the Applicant. Though the Lower Appellate Court has undoubtedly made observations that in a Suit for specific performance between the Plaintiff and the Defendants, the Applicant who is not a party to the transaction, is not concerned with it and therefore need not be joined. In my view, that is a stray observation made by the Lower Appellate Court and cannot impinge upon the order. In so far as the Applicant is concerned, it is required to be noted that it is undisputed position that she has purchased the property pendant lite, she would obviously be governed by Section 52 of the Transfer of Property Act and would be bound by the decree. The fact that the Applicant is the sister-in-law of the original Defendant against whom the specific performance is sought also

1 (2004)2 Supreme Court Case 601

cannot be lost sight of. Hence there appears to be some substance in the contention which was raised on behalf of the decree holder that the application has been filed merely to delay the execution of the decree.

6 In my view, having regard to Section 52 of the Transfer of Property Act assuming that the Applicant is a bonafide purchaser she would undoubtedly be bound by the decree as she is a purchaser pendant lite. The Judgment of the Apex Court in Rajkumar's Case (Supra) would therefore have no application in the facts of the present case where the application filed by the the Petitioner therein for setting aside the decree has been rejected on merits. Hence no case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]