

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

WRIT PETITION NO. 1566 OF 2006

Ramdas Govindrao Jironkar
Age: 50 years, Occ. Business,
R/o Viveknagar, Nanded,
Tq. & Dist. Nanded.

..PETITIONER

VERSUS

Rajesh Balaji Choudhary
Age: 30 years, Occu.: Business,
R/o Gokulnagar, Nanded,
Tq. & Dist. Nanded.

..RESPONDENT

....

Mr. V.D. Salunke, Advocate for petitioner.
Mr. R.B. Choudhary, Advocate for respondent.

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**CORAM : T.V. NALAWADE, J.
DATED : 14th DECEMBER, 2016**

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard both sides by consent for final disposal.

2. The petition is filed to challenge the order made by the Ad-hoc Additional District Judge, Nanded in Miscellaneous Civil Appeal No. 85 of 2005. It appears that present respondent had filed suit for relief of

specific performance of contract of sale of immovable property. The suit came to be dismissed and appeal against the said decision is pending in the District Court. It appears that the Appellate Court had granted temporary injunction in Appeal to prevent the defendant from alienating the suit property. It is contended that in breach of that order, the property came to be sold by present petitioner and when appeal was pending. Submission is made that the purchaser is also made party respondent in the appeal.

3. The application was moved before first Trial Court and then Miscellaneous Civil Appeal No. 85 of 2005 was filed by the original plaintiff. In that appeal, order is made to set aside the sale deed executed by the petitioner in favour of third party as according to the District Court, sale deed was executed in breach of the order made by the Court.

4. If there was initial order of injunction, that was under Order 39 of the Code of Civil Procedure and if there is breach of such order, provision of Order 39 Rule 2A can be used for taking action. Order 39 Rule 2-A is as under:-

“O.39, R.2-A - Consequence of disobedience or breach of injunction.

(1) *In the case of disobedience of any injunction granted or other order made under rule 1 or rule 2 or breach of any of the terms on which the injunction was granted or the order made, the Court granting the injunction or making the order, or any Court to which the suit or proceeding is transferred, may order the property of the person guilty of such disobedience or breach to be attached, the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in the civil prison for a term not exceeding three months, unless in the meantime the Court directs his release.*

(2) *No attachment made under this rule shall remain in force for more than one year, at the end of which time, if the disobedience or breach continues, the property attached may be sold and out of the proceeds, the Court may award such compensation as it thinks fit to the injured party and shall pay the balance, if any, to the party entitled thereto.”*

5. The provision shows that the order which can be made under this Order is attachment of the property and if disobedience continues, further orders can be made under 2A(2) of the same Rule. In the present matter, it is immovable property and at the most it can be said that provision of Section 52 of the Civil Procedure Code also can be used. In that case also it is settled law that transaction itself cannot be treated as void though it will be subject to the decision of the suit. In view of this

circumstance, this Court holds that the District Court has committed grave error in setting aside the sale deed executed by the petitioner. The effect on the sale deed can be considered of the aforesaid circumstances only when plaintiff succeeds in the suit filed for relief of specific performance of contract. As the appeal is pending, this Court holds that order made by the District Court cannot sustain in law.

6. In the result, petition is allowed. Decision given by the District Court is set aside. Rule made absolute in those terms. These observations are for present purpose only.

(T.V. NALAWADE, J.)

SSD