

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2694 OF 2016

1. Vinodkumar Vithalrao Shriramwar,
Age-52 years, Occu-Business,
R/o Yashwantnagar, Nanded,

2. Saleem Hashambhai Hirani,
Age-56 years, Occu-Business,
R/o Khaja Colony, Nanded

PETITIONERS

VERSUS

1. Yashwant Devidasrao Bhore,
Age-58 years, Occu-Business/
Agriculture,
R/o Mahaveer Chowk, Nanded,

2. Vinay Yashwant Bhore,
Age-26 years, Occu-Education,
R/o 144, South, 3rd Street Apartment,
420 Sanjose California, USA 95112,
Through G.P.A.
Yashwant Devidasrao Bhore,
R/o Mahaveer Chowk, Nanded

RESPONDENTS

Mr.R.R.Mantri, Advocate for the petitioners.
Mr.Y.D.Bhore, party in person / respondent No.1.
Mr.M.M.Patil (Beedkar), Advocate for respondent No.2.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 29/04/2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the

consent of the parties.

2. On 16/03/2016, while issuing notice to the respondents, this Court had recorded the submissions of the petitioners as under :-

“1. The petitioner is aggrieved by the order dated 16/01/2016 passed by the Trial Court below Exhibit 195 and Exhibit 196 in Special Civil Suit No.129/2010.

2. Grievance is that the respondents had preferred an identical application in the form of a purshis Exhibit 181 by which the applicant in the purshis had prayed that the presentation of an application under Section 27 and 28 of the Specific Relief Act seeking recession of contract in the Original Civil Suit No.129/2010 deserves to be registered separately as Miscellaneous Application R.J.E.

3. By a speaking order dated 11/01/2006, the Regular Trial Court rejected the application. Within a short time thereafter, application Exhibit 195 and 196 were moved by the respondents for the same purpose before the in-charge Trial Court. Without calling for the say of the other side i.e. the petitioner, the in-charge Trial Court directed the Superintendent to register the application as a Miscellaneous Application by an order dated 16/01/2016 which was passed immediately.

4. Issue notice before admission to the respondents, returnable on 06/04/2016. Till the next date of hearing in the matter, both the impugned orders dated 16/01/2016 below application Exhibits 195 and 196 in Special Civil Suit No.129/2010 shall stand stayed.

5. Litigating sides are put to notice that if possible, this matter would be heard finally at the admission stage on the returnable date.”

3. Respondent No.1 had appeared in person on behalf of himself and respondent No.2 and he prayed for time to engage an Advocate on 06/04/2016. On 22/04/2016, Mr.Patil, learned Advocate appeared on behalf of respondent No.2 and respondent No.1 decided to conduct this matter in person.

4. I have heard the learned Advocates for the respective sides at length. The facts as recorded in paragraph Nos.1, 2 and 3 in the order dated 16/03/2016 reproduced above, are not disputed.

5. Mr.Patil strenuously submits on the basis of the affidavit in reply filed that there was no fraud played by either of the respondents while filing applications Exh.195 and 196 in SCS No.129/2010. He indicates from the copy of the roznama produced that on 11/01/2016, the Trial Court passed an order on Exhibit 181 which is a *purshis* and finally concluded in the order that the *purshis* Exh.181 stands filed. The impression gathered by the respondents was that as the *purshis* has been filed, the order dated 11/01/2016

cannot be assailed and hence on the next date 16/01/2016 as granted by the regular Court, Exhibit 195 and 196 were filed.

6. Mr.Patil further submits that on 16/01/2016 as the regular Court was on leave, the respondent was informed that the matter would be called out in the second session before the Incharge Court. The respondent, who is a General Power of Attorney Holder for both the respondents in this matter as well as before the Trial Court, appeared before the Incharge Court, which passed the impugned order on 16/01/2016 directing the Superintendent to register misc. application. He adds that the copies for the other side were also supplied.

7. Learned Advocate for the petitioners though has strenuously submitted that the respondent has committed a fraud, I am not inclined to go into that aspect of the matter. Ends of justice would be met by setting aside the impugned single line order dated 16/01/2016 and by permitting the petitioners to file their replies to Exhibit 195 and 196 so as to assist the Trial Court in deciding both the applications expeditiously.

8. In the light of the above, this petition is partly allowed. The

impugned order dated 16/01/2016 is quashed and set aside and Exhibit 195 and 196 stand restored to the file of the Trial Court in Spl.C.S.No.129/2010. The petitioners shall file their "SAY" to Exhibit 195 and 196 on or before 10/06/2016. The Trial Court shall hear the litigating sides on the said two applications and shall decide the same as expeditiously as possible and preferably on or before 16/07/2016. Needless to state, the contentions of all the litigating sides are kept open.

9. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)