

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

WRIT PETITION NO. 10720 OF 2015

Vishal Manoharrao Budhwant,
Age 40 years, Occu. Contractor,
R/o. Shivram Nagar, Parbhani,
Tal. & Dist. Parbhani.

**....Petitioner.
(Ori. Deft. No. 3)**

Versus

1. Sandeep Balasaibh Walke,
Age 30 years, Occu. Agril,
R/o. Godawari Coloney, Gangakhed,
Tq. Gangakhed, District Parbhani.
2. Haribhau Narayanrao Nandkhedkar,
Age 60 years, Occu. Medical Practitioner,
R/o. Shivajinagar, parbhani,
Tal. & Dist. Parbhani.
3. Vivak Devikantrao Deshmukh,
Age 38 years, Occu. Architect,
R/o. Lokmanya Nagar, Parbhani,
Tal. & District Parbhani

....Respondents.

Mr. S.G. Jadhavar, Advocate for petitioner.

Mr. S.B. Ghute h/f.Mr. N.D. Kendre, Advocate for respondent No.1.

Mr. M.P. Kale, Advocate for respondent No. 2.

Mr. M.M. Patil, Advocate for respondent No. 3.

CORAM : T.V. NALAWADE, J.
DATED : 7th December, 2016.

JUDGMENT :

- 1) Rule. Rule made returnable forthwith. By consent,
heard both the sides for final disposal.

2) The petition is filed to challenge the order made on Exh. 73 in Special Civil Suit No. 22/2014.

3) The petitioner is defendant No. 3 in aforesaid suit. No W.S. order is made against him. He had filed application, Exh. 73, for setting aside the No W.S. order passed against him and for permission to file written statement and this application is rejected by the Trial Court by observing that no due diligence is shown and he attempted to protract the decision.

4) The suit is filed for relief of specific performance of contract and present petitioner is made party defendant only due to the circumstance that he had filed one suit in respect of the same property against the remaining defendants. It appears that the suit is not in existence today. However, it appears that the present petitioner wants to contend that he is in possession of the suit property under some oral agreement made with defendant No. 2. As the property involved is immovable property, this Court holds that opportunity needs to be given to the present petitioner to have his say in the matter and to take decision on merits. That will also help the plaintiff as plaintiff himself has added him as defendant in view of the interest which the petitioner is claiming in the suit property.

5) The plaintiff is, however, required to spend on the present proceeding and time of plaintiff is also consumed due to present proceeding. It appears that defendant No. 2 is also interested in early hearing of the matter. In view of these circumstances, this Court holds that subject to payment of cost of Rs.25,000/- by the present petitioner, defendant No. 3 to plaintiff, the petition can be allowed.

6) So, the petition is allowed, subject to deposit of cost of Rs.25,000/- (Rupees twenty five thousand) in the Trial Court. The amount is to be paid to the plaintiff and the amount is to be deposited prior to 19.12.2016. If the amount is not deposited by the petitioner prior to that date, it is to be presumed that present proceeding is dismissed. If the amount is deposited, on or before 19.12.2016 written statement of the petitioner is to be accepted by the Trial Court. After that the Trial Court is to dispose of the suit expeditiously and in any case, within four months.

Rule is made absolute in aforesaid terms.

[T.V. NALAWADE, J.]

ssc/