

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

WRIT PETITION NO. 9794 OF 2013

Babasaheb Baburao Gondkar and Others ..PETITIONERS

VERSUS

Pramod Dagdushet More and Others ..RESPONDENTS

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Mr. S.S. Kulkarni, Advocate for petitioners.

Mr. A.S. Gandhi, Advocate for Respondent No.1.

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**CORAM : T.V. NALAWADE, J.
DATED : 21st SEPTEMBER, 2016**

ORDER :

1. The petition is filed to challenge the order passed by the learned Civil Judge, Senior Division, Kopergaon in Special Civil Suit No. 1 of 2010 on Exhibit 33 and Exhibit 29. Both the sides are heard.

2. The suit is filed for specific performance of contract of sale of immovable property for consideration amount of Rs.1.11 crores. It appears that even after service of suit summons, present petitioner did not appear in the suit and ex-party order came to be passed. For setting aside the ex-party order, application was moved. The said application was allowed subject to payment of Rs.1,000/-. No time was fixed for

depositing the amount. As the amount was not deposited within the reasonable time, subsequently the application filed for granting permission to deposit the amount, Exhibit 33 came to be rejected. These orders are challenged in the present proceeding.

3. Considering the nature of claim in the suit and the issue which will be involved if the suit is contested, this Court holds that opportunity needs to be given to the petitioner to contest the suit on merits. However, the fact remains that the suit was filed in the year 2010 and it can be said that only due to conduct and approach of defendant the suit could not make progress till this date. Further plaintiff/present respondent was required to spend on present proceeding also.

4. This Court holds that the order can be set aside and permission can be granted to defend the suit and take the decision on merit subject to payment of cost of Rs.25,000/-. This amount will be in addition to Rs.1,000/- which was already ordered by the Trial Court.

5. The orders made on Exhibit 29 and 33 are hereby set aside. The applications are allowed subject to payment of Rs.25,000/- (Rupees Twenty Five Thousand Only) and also amount of Rs.1,000/- which is

already ordered by Trial Court. The amount is to be deposited in the Trial Court within one month from today. Only after depositing the said amounts it is to presume that the orders are set aside. Failing which, it is to presume that the orders are still there and the present petition is dismissed. As the ex-party order is to be presumed to be set aside, there is liberty to file written statement. Parties to act on authenticated copy of this order.

(T.V. NALAWADE, J.)

SSD