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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3427 OF 2016

Dilip Balwantsing Mehra
Age – 45 years, Occ – Business,
R/o Prop. Nirmal Punjab Garden & Restaurant,
House No.1-10-202, Near Alankar Talkies,
Moti Masjid Road,
New Jalna, District – Jalna

PETITIONER

VERSUS

1. Rajkumar Asaram Dembda
Age – 49 years, Occ – Business,
2. Kannayalal Asaram Dembda
Age – 59 years, Occ – Business,
Both R/o Chhaparbandh Mohalla,
Sadar Bazar, Jalna,
District - Jalna

RESPONDENTS

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Mr. B. R. Kedar, Advocate for the petitioner
Mr. Anand P. Bhandari, Advocate for respondent No.1

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 2nd APRIL, 2016

ORDER :

1. Heard learned advocates for the parties.
2. It is the case of the petitioner, who is defendant in special civil suit No. 61 of 2011 filed by present respondents seeking eviction of the petitioner along with recovery of arrears of licence fee, that as a matter of fact transaction between the parties is

that of sale and purchase. The petitioner had agreed to purchase the property for total consideration of ₹ 9,11,000/- and out of that an amount of ₹ 5,00,000/- has already been parted with. Since dispute arose, special civil suit No.3 of 2011 had been instituted by the petitioner seeking specific performance of agreement of sale, which is pending.

3. It is being contended that the documents, as have been relied on by the trial court while passing the impugned order, purportedly invoking powers under Order XV-A under the Bombay Amendment of the Civil Procedure Code, which have been conferred upon the court, have been created for facilitating to make application to the authorities concerned for running business of the petitioner, are being mis-utilized. It is being submitted that relationship of lessor and lessee is not at all admitted and in the circumstances, the trial court has no power to pass the impugned order.

4. Mr. Bhandari, learned advocate appearing on behalf of the respondents, however, contends that there is voluminous record, which had been gone into by the trial court, which in fact clinches the issue that the theory being put forth about sale purchase transaction is vacuous and without any basis. It is

further being submitted that in the face of record, as is available before the trial court, it cannot be said that the trial court has no powers to pass such order. He further, very fairly refers to that the trial court had passed a very reasonable order, since the petitioner has been directed only to deposit an amount of ₹3,60,000/- and keep on depositing ₹10,000/- per month, directing that the amount be invested in fixed deposit and not to be disbursed to the respondent - plaintiff.

5. Having regard to the contentions on either side, this does not appear to be a case wherein discretionary powers should be invoked in favour of the petitioner. The impugned order appears just, for, the amount is only directed to be deposited and is not supposed to be withdrawn by the plaintiffs.

6. In the circumstances, the writ petition is not being entertained and is rejected with modification that the amount of ₹3,60,000/- pursuant to the impugned order be deposited by the petitioner and he shall continue to deposit an amount of ₹5,000/- per month instead of ₹10,000/- as directed by the trial court.

7. With modification in respect of amount to be deposited per month by the petitioner, writ petition stands disposed of.

8. Learned advocates at this stage, request that the trial court be directed to dispose of the suits expeditiously. As such, the trial court may consider request of the parties for expeditious disposal of the *lis* between the petitioner and the respondents.

[SUNIL P. DESHMUKH, J.]

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