

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRTI PETITION NO.1544 OF 2016

(M/s Mayur Developers & Builders
vs.
Deorao s/o Ganbaji Dongre and others)

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Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

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Court's or Judge's Orders

CORAM : Z.A. HAQ, J.

DATE : 20th JUNE, 2016.

Heard Shri S.V. Tadas, learned Advocate for the
petitioner-original decree holder.

The petitioner-plaintiff had filed Special Civil Suit
No.723/2009 in which decree for specific performance of
contract was passed on 08/07/2010.

The petitioner could not deposit the balance amount
as per the decree within the stipulated time. The petitioner filed
an application praying that the delay in depositing the balance
amount be condoned. The executing Court has rejected this
application by the impugned order.

The executing Court has repelled the submission
made on behalf of the plaintiff that he could not deposit the
amount within the stipulated time because of his illness. The

executing Court has recorded that the medical certificate produced by the plaintiff on record shows that he was under treatment from 01/07/2010 till 29/08/2011, however, it does not state that the plaintiff was advised bed rest or was unable to move. It is recorded that the plaintiff has not examined the Doctor/Medical Officer to substantiate his claim. It is recorded that as per the Medical Certificate, the plaintiff was declared fit on 30/08/2011, however, the application came to be filed before the executing Court on 02/03/2012.

The executing Court has also considered the provisions of Section 148 and Order V Rule 2 of the Code of Civil Procedure.

After examining the facts, documents on record and the legal position, the executing Court has rightly rejected the application filed by the plaintiff. The order passed by the executing Court is just and proper and it cannot be said that the executing Court has committed any patent illegality or there is any error of jurisdiction.

The petition is dismissed. In the circumstances, the parties to bear their own costs.

JUDGE

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