

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

WRIT PETITION NO.2265 OF 2016

(Purushottam s/o Gopal Yadav and another ..vs.. Narendra s/o Dharnidharji Gandhi and others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM : Z.A. HAQ, J.

DATED : 01-07-2016

Heard Shri S.R. Mendiretta, Advocate holding for Shri Rohit Joshi, Advocate for the petitioners/original judgment-debtors and Shri R.R. Srivastava, Advocate for the respondent No.1/decree-holder.

2. The respondent No.1/plaintiff had filed the suit for recovery of amount paid to the petitioners in part performance of the agreement of sale. According to the plaintiff, the agreement of sale was executed by the petitioners acting as holder of power of attorney on behalf of owners (respondent Nos.2 to 5) and the entire amount of Rs.15,00,000/- was received by the petitioners. The civil suit filed by the plaintiff came to be decreed *ex-parte*.

3. The petitioners filed an application for setting aside the *ex-parte* decree. The learned trial Judge, by the impugned order, allowed the application recording that if the petitioners deposit the entire decretal amount within three months, the *ex-parte* decree shall stand set

aside.

4. The learned Advocate for the petitioners, relying on the judgment given by the Hon'ble Supreme Court in the case of ***GMG Engineering Industries & Ors. Vs. ISSA Green Power Solution & Ors.*** reported in ***2015(4) Supreme 508***, has submitted that the condition imposed by the trial Court for setting aside the *ex-parte* decree is onerous and such a condition requiring the judgment-debtors to deposit the entire decretal amount is unsustainable in law.

5. Per contra, the learned Advocate for the respondent No.1-decree-holder has submitted that the trial Court has exercised its jurisdiction properly and it is well settled that while setting aside the *ex-parte* decree, if in the facts, the Court is of the view that the judgment-debtor should be put to certain conditions, the Court has the power to do so. To fortify the submission, reliance is placed on the judgment given by the Hon'ble Supreme Court in the case of ***Mahesh Kumar Joshi vs. Madan Singh Negi*** reported in ***AIR 2015 SC 974***.

6. With the assistance of the learned Advocates for the respective parties, I have examined the documents placed on the record of the petition. It cannot be said that the trial Court has acted arbitrarily, illegally or there is any error in exercise of jurisdiction by the trial Court.

Considering the proposition laid down in the judgment given in the case of ***Mahesh Kumar Joshi*** and the facts of the present case, I am not inclined to interfere with the impugned order in the extra-ordinary jurisdiction.

7. The petition is dismissed with costs quantified at Rs.5,000/- (Rupees Five Thousand) to be paid by the petitioners to the respondent No.1 within one month.

JUDGE

adgokar