

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

WRIT PETITION NO. 88 OF 2016

(MURLIDHAR MAROTI VAIRAGADE...VS..SMT. GODABAI TULSHIRAM MUNDAL & OTH.)

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 : JANUARY 15, 2016.

Heard Shri P.A.Abhyankar, advocate for the petitioner.

The petitioner had filed civil suit praying for decree for specific performance of contract dated 27th July, 1998 and for declaration that the sale deed dated 4th January, 2001 is null and void to the extent of half share of the petitioner for which he has entered into an agreement with the owner of the property. The civil suit came to be dismissed. The petitioner had filed appeal before the District Court which was allowed by the judgment dated 20th October, 2005 and the claim of the petitioner was decreed. It was declared that the sale deed dated 4th January, 2001 is null and void to the extent of half share and the defendants were directed to execute the sale deed to the extent of half share, on payment of the consideration within three months. The petitioner filed execution proceedings in which the issue cropped up that the petitioner had not paid the consideration within three months. The petitioner raised a defence that he had paid the amount. The trial Court found that the defence raised by the petitioner was not acceptable. This order was

challenged before this Court in Writ Petition No. 4433 of 2009 which was disposed of by the order dated 12th November, 2009. This Court refused to interfere with the order passed by the trial Court rejecting the defence of the petitioner that the amount was paid by the petitioner. However, this Court granted liberty to the petitioner to take further appropriate steps in the matter. Pursuant to the liberty granted by this Court, the petitioner filed application seeking extension of time for depositing the amount and seeking permission to deposit the amount. This application is rejected by the executing Court. The petitioner, being aggrieved in the matter, has filed this writ petition.

Shri Abhyankar, learned advocate has submitted that the executing Court has committed an error in rejecting the application filed by the petitioner reeling under misconception that this Court has foreclosed the right of the petitioner to seek extension and that the petitioner was granted permission by this Court only to point out that the balance sale consideration was paid. The submission made on behalf of the petitioner appears to be proper. However, the executing Court has also considered the law on the point and has properly rejected the application filed by the petitioner seeking extension of time to deposit the amount as per the decree. I have independently examined the merits of the matter and I find that the petitioner initially raised a defence that he has paid the balance consideration which is found to be incorrect. Even at the time of filing the application (Exh.2) dated 15th December, 2009, the petitioner had not requested the executing Court to permit him to deposit the amount along with the application.

Considering the conduct of the petitioner, in my view, this is not the case in which the discretionary jurisdiction is required to be exercised in favour of the petitioner.

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

JUDGE

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