

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

WRIT PETITION NO. 8812 OF 2016

Laxman Changdeo Kale

Age: 49 Years, Occu.: Agriculture,

R/o Aadgaon Khu., Tq. Rahata,

Dist. Ahmednagar.

..PETITIONER

VERSUS

Sumanbai Limba Ranjane

Age: 42 years, Occu.: Agriculture,

R/o Pimpri Nirmal, Tq. Rahata,

Dist. Ahmednagar.

..RESPONDENT

....

Ms. S.M. Zaware, Advocate for petitioner.

Mr. R.R. Karpe, Advocate for respondent.

....

CORAM : RAVINDRA V. GHUGE, J.

DATED : 18th JULY, 2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner is aggrieved by the order dated 27th July, 2016 passed by the Trial Court by which application Exhibit 27 praying for extending the time to deposit the money as was directed by the Court, has been rejected.

3. I have considered the strenuous submissions of the learned Counsel for the respective sides. Mr. Karpe, learned Counsel vehemently submits that when no fault can be found in the impugned order, this Court would not interfere and this petition deserves to be dismissed with heavy costs. He further submits that R.C.S. No. 228 of 2012 has been subsequently disposed of as the petitioner failed to deposit the amount of Rs.10,000/- within the period granted by the judgment dated 16th April, 2016.

4. It is not in dispute that the judgment was delivered on 16th April, 2016 and the petitioner was granted time of one month to deposit Rs.10,000/-, so as to ensure the payment of the residual amount.

5. It is equally undisputed that the petitioner failed to deposit Rs.10,000/-. This gave rise to the liberty to the respondent/defendant to seek permission for executing the sale deed within a period of three months.

6. Mr. Karpe, learned Counsel has therefore contended that once the plaintiff fails to deposit the said amount, doors are closed for the plaintiff and it would be open for the defendant to seek permission and get the sale deed executed. He submits that it is not significant whether she has moved the Trial Court upon failure of the plaintiff in depositing the amount or not.

7. The Hon'ble Apex Court in the matter of *Yeshoda Vs. K. Nagarajan* **1996 (11) SCC 228** has concluded that under Section 148 of the Code of Civil Procedure, the Court can enlarge the time for complying with the orders. The said provision gives power to the Court to exercise its discretion in enlarging the time. It is further concluded that in the interest of justice, the Court should grant such extension of time.

8. The Hon'ble Apex Court in the matter of *D.V. Paul Vs. Manisha Lalwani* **AIR 2010 SC 3356** as reiterated the said law and has concluded that Section 148 would permit the Trial Court to exercise its discretion and enlarge the time so as to ensure that ends of justice are met.

9. This Court, in the matter of *Smt. Vatsala Shankar Bansole Vs. Sambhaji Nanasaheb Khandare and Another* **2002 (4) ALL M.R. 374**, arrived at a conclusion that the Trial Court has the power to enlarge the time under Section 148 for complying with the direction of the Court.

10. The facts from the case in hand indicate that the delay was of two months to deposit the amount. The suit was therefore dismissed. It is stated by the learned Counsel for the petitioner that the said amount as well as the amount of cost, if so imposed by this Court, would be deposited before the Trial

Court without fail within four weeks from today. Mr. Karpe, learned Counsel submits that in such a situation, heavy costs be imposed.

11. Considering the above, this petition is allowed. The impugned order dated 27th July, 2016 is quashed and set aside and application Exhibit 27 is allowed. The petitioner shall therefore deposit an amount of Rs.15,000/- inclusive of cost amount of Rs.5,000/- before the Trial Court on or before 19th August, 2017 keeping in view that earlier there was a delay of two months. If the petitioner fails to deposit the said amount, Clause 2 of the order dated 16th April, 2016 shall result in the dismissal of the said suit. Consequentially, R.C.S. No. 228 of 2012 is restored to the file of the Trial Court for enabling the petitioner to deposit the above said amount.

12. Rule is made absolute in the above terms.

(RAVINDRA V GHUGE, J.)

SSD