

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

**CIVIL APPLICATION NO. 15448 OF 2017
IN WP/9545/2016**

**WITH
WRIT PETITION NO.9545 OF 2016**

**SYED ABDUL SAMAD KHALEQ
VERSUS
CHANDRAKANT YADAVRAO GAVANE**

...

Advocate for the Applicant / Petitioner : Shri Y M Khan.

Advocate for the Respondent : Shri A A Nimbalkar.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 05th January, 2018

Per Court:

1 By Civil Application No.15448/2017, the Applicant/ original
Petitioner prays for restoration of the Writ Petition and for condonation of
delay.

2 I have considered the submissions of the learned Advocates
for the respective sides at length.

3 In fact, both the learned Advocates have canvassed their cases
on their merits involved in the writ petition and considering certain
statements made on instructions, I deem it appropriate to allow this Civil
Application by imposing costs of Rs.5000/- (Rupees Five Thousand) and

decide the Writ Petition by restoring it forthwith.

4 As such, the Civil Application is allowed. By the consent of the Respondent, the Petitioner shall deposit an amount of Rs.5000/- (Rupees Five Thousand) with the Advocates Association of Bombay High Court, Bench at Aurangabad on or before 02.02.2018. Consequentially, the Writ Petition is restored.

5 While considering the submissions of the learned Advocates on the Writ Petition, I have recorded the following statements made by them on instructions :-

- (a) The Petitioner/ Plaintiff is willing to deposit the entire amount as is mentioned in the agreement to sale within EIGHT WEEKS from today before the Trial Court in Special Civil Suit No.19/2014.
- (b) The Defendant has enough land to be offered for sale strictly as per the description of the land mentioned in the agreement to sale and the Defendant is ready to handover the portion of the land as is mentioned in the agreement to sale after the Plaintiff deposits the amount.
- (c) Both the sides are willing to arrive at compromise terms before the Trial Court.
- (d) Both the sides consent that the Deputy Superintendent of Land Records, District Beed may be appointed as the Court

Commissioner for measurement of the agricultural land in Gat No.133 admeasuring 1 H and 27.5 R land as per the 7/12 extract on record.

6 Considering the above statements, this Writ Petition is disposed of by setting aside the impugned order dated 05.07.2016 passed by the Trial Court thereby, rejecting the application seeking appointment of the Court Commissioner. The application Exhibit-37 stands partly allowed in the light of the statements made by the litigating sides as recorded above.

7 The Trial Court shall accordingly, issue necessary directions to the Deputy Superintendent of Land Records, District Beed to carry out the measurement of the land in Gat No.133 admeasuring 1 H and 27.5 R as per the copy of the 7/12 extract that has been placed on record. The said measurement can be carried out expeditiously and preferably within a period of EIGHT WEEKS from today.

8 Needless to state, the litigating sides may submit their consent terms in the event they arrive at compromise terms, before the Trial Court.