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

WRIT PETITION NO. 10062 OF 2016

Suresh s/o Bhagwat Mahajan,
Age: 45 years, Occ: Agri.,
R/o. Hatnur, Tq. Bhusawal,
Dist. Jalgaon. ..PETITIONER

VERSUS

Rekha w/o Muralidhar Patil,
Age: 50 years, Occ: Agri.,
R/o. Kathore Khd. Tq.Bhusawal,
Dist. Jalgaon. ..RESPONDENT

Mr P.B. Patil, Advocate for petitioner;
Mr V.P. Patil, Advocate for respondent

CORAM : NITIN W. SAMBRE, J.

DATE : 31st OCTOBER, 2017

ORAL ORDER :

In a Special Civil Suit No.171 of 2008,
the Court of 5th Joint Civil Judge, Senior
Division, Jalgaon passed following decree in favour
of petitioner-plaintiff.

"1. Suit is hereby decreed with cost.

2. Defendant shall execute the sale deed
of suit property in favour of plaintiff

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after accepting the amount of Rs.25,000/-, within a period of two months from the date of decree.

3. Plaintiff shall deposit the remaining consideration amount of Rs.25,000/-, before the Court and if defendant fails to execute the sale deed within a period of two months then plaintiff is entitled to get execute the sale deed through the court machinery.

4. Decree be drawn up accordingly."

As a consequence, the suit for specific performance initiated by present petitioner – plaintiff came to be allowed, which was confirmed up to this Court in Second Appeal No. 471 of 2016.

2. As the respondent-J.D. has failed to execute sale deed in terms of decree passed by the trial Court for specific performance, a draft sale deed is submitted by the petitioner for getting the sale deed executed through Court.

3. By the order impugned passed below

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Exhibits-20 and 77 in the execution proceedings being Regular Darkhast No.119 of 2012, learned Executing Court has directed the petitioner – D.H. To remove certain words from draft sale-deed, which speaks of transferring possession of the suit property in favour of D.H. and also reference to the word 'agreement to sell'. As such, this petition.

4. Learned Counsel for the petitioner, while inviting attention of this Court to the provisions of Section 22 of the Specific Relief Act and Section 55 (1)(F) of the Transfer of Property Act, would urge that once the decree for specific performance is passed, the concerned Court is also empowered to grant ancillary reliefs for taking the decree for specific performance to its logical end such as decree for possession of suit property. So as to substantiate his contention, he would draw support from the aforesaid provisions and also judgment of this Court in the matter of **Prataprai Trambaklal Mehta vs Jayant Nemchand Shah and**

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others reported in **1996(2) Mh.L.J. 885**, particularly paragraph Nos. 11, 12 and 13 thereof.

5. According to him, the order impugned, as such, is not sustainable.

6. Per contra, learned Counsel for the respondent – J.D., while inviting attention of this Court to the provisions of Civil Manual, particularly Paragraph-388, would urge that the order passed by the Executing Court is justified in view of the provisions thereof. He sought dismissal.

7. It is not in dispute that when the petitioner filed a suit for specific performance, he has in express terms come out with a prayer that the sale deed be directed to be executed in his favour. In alternative, he sought refund of the amount.

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8. In response to such prayer, the decree for specific performance passed by the trial Court on 24th August, 2011 has attained finality up to this Court in Second Appeal.

9. No doubt, in the judgment delivered in the suit granting specific performance, there is no express reference to issue of possession to be handed over by the J.D. to the petitioner – plaintiff.

10. However, if the scheme of Section 22 of the Specific Relief Act is considered in the backdrop of provisions of Section 55 of the Transfer of Property Act, it is amply clear that for taking decree for specific performance to its logical end, the Court is empowered to direct even handing over possession of the suit property. The issue is no more *res-integra*, as the petitioner has rightly invited attention of this Court in the matter of **Prataprai Trambaklal Mehta**, cited supra, particularly paragraph Nos.11, 12 and 13.

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It is not necessary in a suit for specific performance to separately claim relief of possession. The decree of specific performance includes everything incidental to be done by the parties in tune with Section 55 (1)(F) of the Transfer of Property Act.

11. In view thereof, the order impugned, in my opinion, appears to be contrary to the scheme of Section 22 of the Specific Relief Act and Section 55 of the Transfer of Property Act and hence, not sustainable and accordingly, is quashed and set aside. It is directed that the draft sale deed submitted by the present petitioner does not warrant any amendment or deletion.

12. The Executing Court to proceed with the execution proceedings in the light of above observations.

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13. The petition stands allowed in above terms.

(NITIN W. SAMBRE, J.)

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