

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

WRIT PETITION NO. 282 OF 2016

RUPAK KESHAVRAO JONDHALE
VERSUS
SHAKUNTALA NAMDEO RATHOD AND ANOTHER

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Advocate for Petitioner : Shri Alok Deshpande.
Advocate for Respondent 1 : Shri J.R.Patil.
Advocate for Respondent 2 : Shri V.C.Patil h/f Shri U.b.Bondar.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 10th January, 2017

Per Court:

1 The Petitioner has challenged the order dated 27.11.2015 by which the Trial Court has permitted Respondent No.1/ Plaintiff to withdraw R.C.S. No.306/2014 as against the Petitioner, who is Defendant No.2. The Trial Court has awarded costs of Rs.500/- and has allowed the Plaintiff to unconditionally withdraw the suit against Defendant No.2/ Petitioner.

2 On 19.01.2016, after hearing the Petitioner, this Court stayed RCS No.306/2014. Interim relief was continued thereafter. The matter was adjourned at the request of the Petitioner on 08.03.2016, 30.03.2016, 13.07.2016 and the Petitioner remained absent on 04.01.2017. The matter

was again adjourned at the request of the Petitioner on 06.01.2017.

3 The Petitioner once again seeks an adjournment today. The learned Advocates for the Respondents have vehemently opposed the said request on the ground that the order passed by the Trial Court permitting the Plaintiff to unconditionally withdraw the suit against the Petitioner/ Defendant No.2, has been assailed in this Court and the entire proceedings have been stayed despite the fact that the Petitioner has already preferred RCS No.551/2015 seeking specific performance of the agreement to sale against Defendant No.1, which has nothing to do with the original Plaintiff in these proceedings.

4 In this backdrop, I have considered the submissions of the learned Advocate for the Petitioner and have gone through the thirteen grounds set out in the memo of the petition. It appears from the record that the Plaintiff (Shakuntala) is seeking declaration against Defendant No.1 (Kavita). The Petitioner, who is Defendant No.2 in RCS No.306/2014, claims that Kavita has entered into an agreement to sale which is a notarized document, thereby, agreeing to sell the said suit property to the Petitioner. RCS No.551/2015 has been filed by the Petitioner for seeking execution of the sale deed and specific performance of the contract between the Petitioner and Kavita.

5 The Trial Court, while passing the impugned order, has considered all these aspects. So also, the Petitioner himself has filed RCS No.551/2015 concerning the same suit property. Though he has filed the Written Statement in RCS No.306/2014, he has not filed a counter claim which could have been entertained as an independent suit on his behalf and instead has filed RCS No.551/2015.

6 In this backdrop, if the Plaintiff does not desire to press the suit against the Petitioner and in the light of the fact that the Petitioner himself has filed his independent suit, I do not find that the impugned order could be termed as being perverse or erroneous. As such, the Petitioner is not rendered remedy-less.

7 In the light of the above, this Writ Petition being devoid of merit is, therefore, dismissed.

kps

(RAVINDRA V. GHUGE, J.)