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

CRIMINAL WRIT PETITION NO.1005 OF 2015

Dharampal s/o Panjabrao Talgote,
Aged about 38 years, Occ: Service,
R/o. Akot, Tq. Akot, Distt. Akola
presently at A-405, Shri Krishna
Sharddha Tower, Lal Chakki Chowk,
Station Road, Ulhasnagar-421004. ..PETITIONER

VERSUS

1. State of Maharashtra,
through Police Station Officer,
Akot, Tq. Akot, Distt. Akola.
2. Sudhir s/o Nagorao Raut,
Aged about 38 years,
Occ: Agri., R/o. Pushpatej
Apartment, Daryapur Road,
Akot, Tq. Akot, Dist. Akola. ..RESPONDENTS

Mr. R.L. Khapre, Advocate for petitioner;
Mr N.H. Joshi, Addl. Public Prosecutor for
respondent No.1;
None appears for respondent No.2

CORAM : N.W. SAMBRE, J.

DATE : 16th MARCH, 2017

ORAL ORDER :

This petition is taken out by the original
accused, who is facing Summary Criminal Case No.536
of 2013, seeking stay to his prosecution, on the
ground that collateral issue is pending

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adjudication in Regular Civil Suit No. 75 of 2013 between the same parties pending on the file of learned Civil Judge, Junior Division, Akot.

2. The facts as are necessary for deciding present writ petition are as under :-

The respondent No.2 herein is the owner of plot bearing nazul sheet No.20-C Plot No.126/2, Occupancy right 'A', area 545.4 Sq. mtr. (5668.50 sq.ft.). In addition, Occupancy right 'B', to the extent of 144.2 sq. mtr. (1551.59 sq. ft.) at village Akot. The petitioner entered into agreement of purchase of the said property by virtue of agreement dated 24th August, 2012 agreeing for total consideration of Rs. 1,11,00,000/-, of which, he made part payment on the date of execution of the agreement. It is further agreed in the said agreement that Rs. 22,50,000/- will be paid on 28th September, 2012 and next instalment of Rs.27,75,000/- will be paid on 30th April, 2013. It was also agreed that balance amount of Rs.55,50,000/- will be paid on

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31st December, 2013. It appears that notarized document was executed acknowledging payment of Rs.22,15,250/- on 30th April, 2013 towards part payment of total consideration of Rs.66,45,750/-. It appears that the possession of the property was parted by respondent No.2 to the present petitioner and condition is incorporated in the second agreement that if commitments of payment are not honoured, power of attorney executed will cease to operate by issuing notice in the newspaper and possession of the petitioner will cease to operate.

3. It is then to be noted that registered power of attorney was executed in favour of the petitioner by the respondent on or about 24th September, 2012.

4. As the commitments in the agreement were not honoured, there appears to be differences cropped up between the parties resulting into issuance of notice. Even cheques referred above issued towards part consideration were dishonoured, same has resulted into filing of criminal case

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being Summary Criminal Case No. 536 of 2013 for dishonour of cheque of Rs.22,15,250/-.

5. Respondent No. 2 then filed Regular Civil Suit No. 75 of 2013 for permanent injunction praying following prayers :

(i) Decree the suit by passing a permanent injunction against the defendants restraining them from making any illegal construction on the suit site.

(ii) Cost of the suit may kindly be saddled on the defendants.

(iii) Considering the facts and circumstances of the case any other relief, which the Hon'ble Court deem fit and proper, may also kindly be granted in favour of plaintiff.

6. In the said suit, following issues are framed :

1. Whether plaintiff proves that, he is owner and possession of suit property?

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2. Whether plaintiff proves that, he entered into an agreement of sale of suit property with defendant no.1 on 24/08/2012?
3. Whether plaintiff proved that, defendant started illegal construction over the suit property?
4. Whether plaintiff proves that, he has cancelled the Power of Attorney of defendant?
5. Whether the plaintiff is entitled for permanent injunction against the defendants?
6. Whether defendants prove that, plaintiff agreed to sell out the suit property i.e. 'A' tenure and 'B' tenure to them?
7. Whether defendants prove that, they are entitled for directing the plaintiff for execute the Power of Attorney in their favour?
8. Whether defendants are entitled for payment of installments as agreed in

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the earnest deed?

9. Whether defendants are entitled for any relief which is claimed in their counter claim?

10. What order and decree?

7. Another Special Civil Suit No. 23 of 2015 for declaration, specific performance of contract and permanent injunction and damages is initiated by present petitioner against the respondent-owner pending on the file of Civil Judge, Senior Division, Akola.

8. In the said suit, an application under Order 2 Rule 2 of the Code of Civil Procedure came to be moved by respondent-owner – complainant.

9. The Court accordingly framed issue, as to whether the suit is barred under the provisions of Order 2 Rule 2 C.P.C.?

10. In the aforesaid background, Mr. Khapre, learned Counsel for the petitioner would urge that

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the suit initiated by respondent-owner being Regular Civil Suit No. 75 of 2013 for injunction against the petitioner is pending, hence criminal prosecution is liable to be stayed. Criminal prosecution for dishonour of cheque under Section 138 of the Negotiable Instruments Act cannot be continued, as respondent-complainant himself has come out with a case that petitioner is not entitled for property in question, for which consideration cheque was issued. He would then rely upon judgment of the Apex Court in the matter of **Commissioner of Income Tax, Mumbai versus Bhupen Champak Lal Dalal & anr. Etc.** reported in A.I.R. 2001 SC 1096 so as to canvass that proceedings in question are not independent proceedings but are collateral one. He would rely upon paragraph-3 of the said judgment so as to substantiate his contention.

11. In addition, learned Counsel for the petitioner would also rely upon the judgment of this Court in the matter of **Bhanu M. Vakil v Chandra Oshiram Keswani and another**, reported in

1991 CRI.L.J. 2819. A submission of learned Counsel based on observations made in Paragraphs-13, 14 and 15 are criminal prosecution ought to be given precedence in general but there is civil suit, which also involves collateral issue, which has bearing over the criminal issue, hence proceedings in criminal issue are required to be stayed.

12. In the aforesaid backdrop, if the submission of Mr. Khapre, learned Counsel is to be evaluated in the light of registered power of attorney and two agreements entered into between the parties, it appears that possession was parted by respondent-owner to the petitioner as he has issued cheque in question, which was dishonoured. Admittedly, the petitioner claims to be in possession of the suit property without making any payment towards consideration. The petitioner is rather enjoying the property at the costs of respondent No.2 and dishonour of cheque has given rise to the filing of the criminal proceedings. The proceeding under Section 138 of the Negotiable

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Instruments Act against the petitioner if are considered in the backdrop of proceedings of Regular Civil Suit No. 75 of 2013, it is worth to mention here that the petitioner is trying to blow hot and cold at the same time, as the petitioner has denied ownership of the property including that of possession of respondent No.2. He has also denied execution of agreement of sale. The petitioner has started illegal construction over the said property as is alleged by the respondent in the proceedings before the lower Court.

13. In the backdrop of above facts, if prayer for stay moved by the present petitioner in criminal summary proceedings and Regular Civil Suit No. 75 of 2013 is granted, same will act as granting premium over illegality of the petitioner. The conduct of petitioner is required to be noticed, particularly in the backdrop of pleadings and issues framed.

14. The claim of the petitioner, if to be appreciated, as observed herein above, on one

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hand, he is claiming to be in possession of the property pursuant to agreement without parting with any amount and on other hand, depriving the respondent-owner of the said property and also valuable consideration by seeking stay to the summary criminal proceedings initiated under Section 138 of the Negotiable Instruments Act. The said approach on the part of petitioner-accused is nothing but misuse of process of law, as could be inferred from the conduct as is reported herein above.

15. In my opinion, the judgment cited supra, in the above referred backdrop, will be of hardly any assistance. As such, present writ petition is devoid of merits, fails and stands dismissed.

(N.W. SAMBRE, J.)

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