IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10268 OF 2018

RUSHIKESH PRALHAD AUCHARE AND OTHERS
VERSUS
OMKAR PRALHAD AUCHARE AND ANOTHER
...
Advocate for Petitioners : Shri Bora Satyajit S.
Advocate for Respondents 1 & 2 : Shri Mahajan Sandeep Y.
...
CORAM : RAVINDRA V. GHUGE, J.
Dated: October 08, 2018
...

PER COURT :-

1 The petitioners, who are the appellants in RCA No.380 of 2016, in which, they have challenged the judgment and decree delivered in RCS No.18 of 2008, are aggrieved by the impugned order dated 28.8.2018, by which, the appellate Court has rejected application Exhibits 23, 39 and 30, filed by the petitioners.

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

3 These petitioners are the original defendants, who have suffered the judgment and decree of the trial Court dated 17.10.2016. The suit property includes a house and an agricultural land. After preferring the appeal, the appellate Court passed an order dated 8.3.2018, below

Exhibit 5, by which, the judgment and decree was stayed on the condition that these petitioners would deposit an amount of Rs.50,000/- within six weeks in that Court, failing which, Exhibit 5 would be deemed to be rejected.

4 These petitioners had deposited Rs.25,000/- on 4.4.2018 and then moved application Exhibit 20 seeking enlargement of time to deposit the remaining amount, which was rejected on 19.4.2018. Another application Exhibit 23 was filed, which was allowed on 23.7.2018. Yet the amount was not deposited. Other applications Exhibits 29 and 30 were filed seeking permission to immediately deposit the remainder amount and that has been refused by the impugned order.

5 Learned counsel for the plaintiffs submits on the basis of instructions and a purshis filed before the appellate Court that the plaintiffs have received the possession of the agricultural land, through the Taba Mandal Adhikari, Jamkhed on 12.7.2018. The possession of the house property is still not received.

6 Learned counsel for the petitioners submits on instructions from one of his client, who is present in the Court, that further costs would be deposited if this Court orders and these petitioners need protection

since immovable properties are involved. Learned counsel for the plaintiffs have strenuously opposed this request and seeks dismissal of this petition.

7 Considering the fact situation and the comparative hardships, I find that the petitioners can be directed to deposit the amount of Rs.25,000/- before the appellate Court along with costs of Rs.10,000/-, on/or before 25.10.2018 and the appeal could be expedited.

8 As such, this petition is partly allowed. The impugned order dated 28.8.2018 is quashed and set aside and Exhibits 23, 29 and 30 stand disposed off with the following directions:-

(A) The petitioners shall deposit an amount of Rs.25,000/- along with costs of Rs.10,000/- on/or before 25.10.2018 before the appellate Court. Extension of time shall not be granted even for a day.

(B) The plaintiffs would withdraw an amount of Rs.10,000/- towards costs in equal proportions.

(C) The parties would maintain status quo as existing today and are restrained from creating third party interest or encumbrances or deteriorate the suit properties untill the appellate Court decides the appeal.

(D) The appellate court shall decide RCA No.380 of 2016

on/or before 31.12.2018.

(E) All contentions of the litigating sides including the submission that the possession of the land property has been handed over to the plaintiffs, are left open and the appellate court shall decide the appeal by deciding the same.

Ajay Kishanrao Losarwar

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Date: 2018.10.09 10:08:46 +0530

(RAVINDRA V. GHUGE, J.)

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