

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3225 OF 2015

SHANKAR BHAGWAN JADHAV
VERSUS
NARAYAN NATHA PAWAR AND OTHERS

...

Advocate for Petitioner : Shri Patunkar S.S.
Advocate for Respondent 1 : Shri Gandhi A.S.
Advocate for Respondents 2 to 5 : Shri Bora S.S.

...

CORAM : RAVINDRA V. GHUGE, J.
Dated: July 27, 2018

...

PER COURT :-

1. After this matter was heard at length on 10.7.2018 and 24.7.2018 and as this Court expressed its disinclination to entertain this petition, the petitioner sought time to take instructions. Hence, this Court passed an order on 24.7.2018 which reads as under:-

“1. This matter is heard at length.

2. Before the order could be dictated, learned counsel for the petitioner canvassed that Order XXI Rule 29 of the Civil Procedure Code would entitle this petitioner to a stay of the execution proceeding since he has preferred RCS No.62 of 2014, alleging that the decree is a fraud and is of a collusive nature. When called upon to state as to whether he is willing to deposit the market price of the land which is subject matter of execution proceeding, as a pre-condition for staying the execution proceeding, learned counsel for

the petitioner prays for time to take instructions.

3. *S.O. to 27.7.2018 for passing orders.”*

2. Learned counsel for the petitioner submits, on instructions, that the petitioner is unable to deposit the market price before the executing Court. It is further stated, on instructions, that the petitioner desires to withdraw this petition with a request that Exhibit 5 application pending in RCS No.62 of 2015 will be worked out and only for a period of eight weeks, the ad-interim protection granted by this Court on 4.1.2016 may be continued.

3. Learned Advocate for respondents 2 to 5 opposes the said request and submits that the ad-interim relief was granted ex-parte without hearing the respondents and a purchaser *pendente lite* cannot be granted any relief.

4. Considering the above and keeping in view that this Court had granted ex-parte ad-interim relief on 4.1.2016, this petition is disposed off as withdrawn, with the following directions:-

(A) The petitioner / plaintiff shall canvass his oral submissions on application Exhibit 5 on/or before 14.8.2018.

(B) If so advised, the litigating sides may enter their written notes of arguments on/or before the above stated date.

(C) The learned trial Court shall pass an order on application Exhibit 5 on its own merits and without being influenced by the ex-parte ad-interim relief granted by this Court, on/or before 31.8.2018.

(D) It is made clear that the trial Court shall consider the contentions of the litigating sides and the litigating history in between the parties, while deciding Exhibit 5 and shall not carry an impression that, as this Court had granted ex-parte ad-interim relief, the same needs to be continued.

(RAVINDRA V. GHUGE, J.)

...