

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.13815 OF 2017
(Navnath Rambhau Zanzan Vs. Santosh Prabhakar Zanzan and
another)

Mr.N.P.Bangar, Advocate for the petitioner.
Mr.Ashish Shinde h/f Mr.A.B.Hawale, Advocate for respondent Nos.
1 and 2.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 03/12/2018

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner, who is a judgment debtor, is aggrieved by the order dated 23/10/2017 passed by the Trial Court by which a recovery warrant for an amount of Rs.2,01,800/- has been issued under Order XXI Rule 43 of the Code of Civil Procedure.

3. I have heard the learned Advocates for the respective sides. The petitioner does not dispute that he was liable to pay an amount of Rs.4,01,800/- to the respondents pursuant to the decree of the Trial Court in RCS No.114/2016 decided by a compromise decree dated 01/03/2016. It is also admitted by the respondents that they

have received an amount of Rs.2,00,000/-.

4. Issue is that the petitioner has taken a stand that instead of directly making the payment to the decree holders, he deposited an amount of Rs.4,01,800/- in the account of a third party namely Pandurang Laxman Jogdand. This Jogdand has done the part apportionment of Rs.2,00,000/- to the decree holders. The petitioner/ judgment debtor contends that the remaining amount of Rs.2,01,800/- was handed over to the respondents by Pandurang Laxman Jogdand and Baban Ganpat Jadhav. Grievance is that the Executing Court, dealing with RD No.102/2016, has passed the impugned order concluding that the amount of Rs.2,01,800/- was not paid by the judgment debtor to the decree holder.

5. Learned Advocate for the petitioner sought a pass over and after taking instructions submits that an opportunity to lead evidence may be granted before the Trial court. Learned Advocate for the decree holders submits that as the petitioner has deposited an amount of Rs.1,00,000/- in this Court on 18/12/2017 under orders, the remaining amount of Rs.1,01,800/- be deposited before the Executing Court and the respondents are willing to allow the petitioner to lead evidence on the aspect of Pandurang Jogdand

having delivered the amount of Rs.2,01,800/- to the decree holders. Learned Advocate for the petitioner submits on instructions that the said amount of Rs.1,01,800/- would be deposited before the Executing Court on or before 21/01/2019. The respondents are agreeable.

6. In view of the above, this petition is partly allowed by consent and the impugned order dated 23/10/2017 shall be kept in abeyance till 21/01/2019, subject to the following conditions :-

- [a] The Registry of this Court shall transfer the amount of Rs.1,00,000/- to the Court of the learned 7th Joint Civil Judge, Jr.Division, Beed alongwith accrued interest, expeditiously.
- [b] The petitioner shall deposit an amount of Rs.1,01,800/- before the said Court on or before 21/01/2019.
- [c] There shall be no extension of time for depositing the said amount.
- [d] If the said amounts are deposited, the Executing Court would permit the petitioner to lead oral evidence, expeditiously and conclude the recording of evidence of the petitioner on or before 18/03/2019.
- [e] A list of witnesses would be furnished by the petitioner on 21/01/2019.
- [f] If the amount, as directed, is not deposited by the petitioner, the impugned recovery warrant shall be executed and no grievance of this petitioner would then be entertained.

7. Rule is made partly absolute in the above terms.

(Ravindra V.Ghuge, J.)