

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

27. WRIT PETITION No. 13967 of 2018

Rameshnath Ramkirshna Sarda ... Petitioner
Versus
Premier Transport of India, Nagpur,
Br. Nanded and another . .. Respondents

Mr. S.S. Patil, Advocate for petitioner.

Coram : N.M. Jamdar, J.

Date : 17 December 2018.

ORAL ORDER :

1. The petitioner-judgment debtor had raised objections to the execution of the decree on two counts, firstly, that the compromise decree postulates that only shop and godown be sold to the judgment debtor-tenant of the suit premises and not an open area in the plot. As regards this objection, the sale deed has been prepared pursuant to the compromise, which contains the said clause. The learned Civil Judge was right in observing that the sale deed has been approved and the petitioner has to approach the Appellate Court against the same. The learned Counsel for the petitioner submits that the petitioner has already approached the Appellate Court and the appeal is pending.

2. The learned Counsel for the petitioner then submitted that the compromise, which is sought to be executed, contains the clauses No. 13 and 14 that in case the construction activity fails for any reason, the respondent- decree holder-tenant can get partly constructed portion and respondent-tenant can complete the construction at his own costs. He submitted that no construction activity is carried out, but in view of this clause, the respondent-decree holder can complete the construction at his own costs.

3. Though there was such a compromise decree, the petitioner has not even started the construction. What is postulated by this compromise is, if the construction activity does not 'complete', in that eventuality, the respondent will be entitled to complete the construction. It does not mean that the respondent-tenant has to build the entire building and there is no responsibility whatsoever on the petitioner to construct. In these circumstances, no interference is warranted in the impugned order.

4. The Writ Petition is accordingly rejected.

N.M. Jamdar, J.