

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

5 WRIT PETITION NO.8651 OF 2019

RAVISHRE VIRBHADRARAO KANDULA AND ANOTHER
VERSUS
GOVIND PANDURNG BHANGE

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Advocate for Petitioners : Mr. A. S. Bajaj
Advocate for Respondent : Mr. S. P. Sonpethkar

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 14th OCTOBER, 2019.

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PER COURT :

1. On 30.09.2019, after hearing the learned advocates for the respective sides, this Court had passed following order :

“1. The learned Advocates for the petitioners and the respondent agree to work out the modalities for selling the land to the prospective buyers M/s. Dishaan Infra & Resources LLP, Shop No.1, Heart Beats, Bhosalenagar, Hadapsar, Pune 411028, Ph.No.91-9923206879. They wish to tender the terms of such sale with a court commissioner appointed by the executing Court to over look such sale transaction. Money would be deposited in the executing

Court.

2. Stand over to 14.10.2019 for “passing orders”.

2. Considering the above, the litigating sides agree that the above mentioned prospective buyer would appear before the executing Court with the assistance of the petitioners and deposit the entire sale proceeds before the executing Court.

3. As on date, the respondent claims that he has an outright claim for Rs.80 lakhs, which he would withdraw from the executing Court. He has incurred a lot of expenditure on account of the dishonouring of the cheque given by the petitioners and had to enter into litigation. An amount of Rs.5 lakhs over and above Rs.80 lakhs may be directed to be deposited in the executing Court.

3. The learned advocate for the petitioners opposes the said request on the ground that the cost of litigation is an integral part of legal battles and every side has to incur litigation costs which cannot be

recovered while executing a decree. He further adds that had the respondent / decree holder not obstructed the sale, the parties would not have seen this day and matter would have got settled long ago.

5. Having considered the consensus between the parties to the extent of depositing Rs.80 lakhs before the executing Court by the prospective buyer, who is said to be agreeable, this petition is disposed off by keeping the order dated 24.04.2018 below Exhibit-25 in Special Darkhast No. 19 of 2017, in abeyance, subject to the following conditions :

a) The parties would tender the terms of sale between the petitioners and M/s. Dishaan Infra & Resources LLP, mentioned above, before the executing Court on or before 15.11.2019;

b) A Court Commissioner would be appointed by the executing Court in order to facilitate the smooth transition of the sale of land and the handing over of the possession of the land by the petitioners to M/s. Dishaan Infra & Resources LLP;

c) Though the prospective buyer M/s. Dishaan

Infra & Resources LLP shall deposit the entire sale proceeds in the Court, the decree holder would withdraw Rs.80,00,000/-(Rs. Eighteen lakhs) only after the peaceful possession of the said land is handed over to M/s. Dishaan Infra & Resources LLP with the cooperation of the decree holder and the judgment debtors.

d) Over and above Rs.80,00,000/-, an amount of Rs.5,00,000/- would be retained by the executing Court as a buffer amount to sort out minor issues between the parties as regards litigation costs. This would not mean that this Court has expressed an opinion in favour of the settlement of the litigation fees.

e) The remaining amount, over and above Rs.85 lakhs, shall be withdrawn by the petitioners from the executing Court immediately after the amount is deposited since that would not be a part of the satisfaction of the decree before the executing Court.

(RAVINDRA V. GHUGE, J.)

vsm/-