

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.14953 OF 2019
IN WP/4481/2019

RAMCHANDRA NAGAPPA CHOUDHARI
VERSUS
UDAY SAHAKARI GRAH NIRMAN SANSTHA MARYADIT THROUGH
AUTHORISED MEMBER

Mr.A.V.Patil-Indrale h/f Mr.A.N.Gaddime, Advocate for the applicant.
Mr.S.Y.Patil h/f Mr.U.L.Momale, Advocate for the respondent.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 17/12/2019

PER COURT :

1. The applicant prays for extension of 7 days time for depositing the amount towards the Nimtana Commission Fees pursuant to the order of this Court dated 12/06/2019.

2. I have considered the submissions of the learned Advocates at length and have perused the record available, as well as, the other proceedings in which these litigating sides were engaged.

3. In WP No.4481/2019, this Court had passed an order on 12/06/2019, which reads as under :-

“1. The petitioner/housing society is aggrieved by the order dated 12/10/2018 passed by the Trial Court in RCS No.36/2014 by which application Exh.226 filed by defendant No.10 seeking appointment of a Court Commissioner as Nimtandar so as to have a Nimtana measurement, has been allowed.

2. Learned Advocate for the petitioner submits on instructions that though the impugned order could not have been passed, the Housing Society members are suffering the rigours of litigation since defendant No.1 is prolonging the matter. It is alleged that defendant No.1 Ramchandra has sold a plot from the open land/space belonging to the Society. If a time frame is granted, as the impugned order is still not implemented after 8 months, the grievance of the petitioner would be redressed.

3. In view of the above, I am passing the following order without issuing notice to the respondents as I am directing the implementation of the order dated 12/10/2018. As such, this petition is disposed off with the following directions :-

[a] In the event, defendant No.1 Ramchandra has not deposited the Nimtana commission fees and the documents as per Clause (3) of the impugned order, he shall do so, as expeditiously as possible and in any case on or before 28/06/2019.

[b] If the amount is already deposited, the Nimtandar shall complete the exercise of re-measurement, which is termed as Nimtana measurement, by giving notice to all the litigating sides, within a period of 8 (eight) weeks from today.

[c] If the amount is not already deposited and is now deposited in view of the above directions, the Nimitandar shall proceed to issue notice to the parties and shall carry out the re-measurement in accordance with the order passed, within 6 weeks thereafter.

[d] The Trial Court would endeavour to decide RCS No.36/2014 (Original No.240/2010) as expeditiously as possible and in any case on or before 31/12/2019.

[e] In the event, the above direction of depositing money is not complied with by defendant No.1, the order of the Trial Court dated 12/10/2018 shall lose its efficacy on 28/06/2019.

[f] The Trial Court is at liberty to refuse adjournments to the litigating sides, if such requests are based on unreasonable grounds.”

4. Despite 8 weeks having been granted, the applicant did not deposit the fees. 6 months had already passed by since the Trial Court appointed the Court Commissioner by order dated 10/12/2018.

5. It appears from the submissions of the parties that the plaintiff has already completed his final arguments in RCS No.36/2014 in view of the direction of this Court to complete the adjudication in the matter by 31/12/2019.

6. The learned Advocate for the plaintiff has strenuously opposed this petition and has narrated circumstances which, in my view, do indicate that this applicant has been delaying the matter on the pretext of being 80 years old, when his 2 sons are already party to the pending suit.

7. The learned Advocate for the applicant was called upon to submit as to why this application should not be rejected, in view of his conduct. He submits that this court may impose any amount as costs which will be paid by the applicant within 4 weeks in this Court. So also, he will deposit the fees for the *Nimtana* measurement with the concerned Office within 7 days from today.

8. The learned Advocate for the plaintiff submits that Rs.5,000/- from the costs amount may be donated to the Social Project “**Shantivan**”, **Arvi, Tq.Shirur Kasar, District Beed.** an Orphanage catering to the orphans, who have lost their parents (farmers' suicide).

9. Considering the above, this application is partly allowed and directions for dealing with the pending suit expeditiously, are being

passed by consent as follows :-

[a] The applicant Ramchandra shall deposit an amount of Rs.25,000/- in this Court on or before 10/01/2020.

[b] Rs.5,000/- from the said amount shall be transmitted by the Registry of this Court in the name of **“Bhavani Vidhyarthi Kalyan Pratishthan, Arvi”** by way of electronic transfer (State Bank of India, Branch Shirur (Kasar), Account No.33446000963, IFSC Code : SBIN0005995) and shall report compliance.

[c] The non-applicant, plaintiff can withdraw the amount of Rs.20,000/- without conditions from this Court.

[d] The entire charges for *Nimtana* measurement shall be deposited by the applicant Ramchandra before the competent authority on or before 24/12/2019 upto 3.00 p.m., failing which, this order shall stand recalled and the Trial Court shall proceed to deliver it's judgment in the suit.

[e] If the amount as directed is deposited with the *Nimtana* Office, the instructions issued by the Trial Court vide it's order dated 12/10/2018, shall be complied with by the *Nimtandar*, on or before 24/01/2020 and there shall be no extension of time.

[f] The *Nimtandar* shall tender his report before the Trial Court on or before 05/02/2020 and the parties would be at liberty to lead

evidence only with relation to the report of the *Nimtandar*, on or before 21/03/2020.

[g] Thereafter, the parties would advance their oral submissions on or before 31/03/2020 and the Trial Court would deliver its judgment in the said suit, on or before 30/04/2020.

(Ravindra V.Ghuge, J.)