

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8284 OF 2015

Bhagwan L. Gaikwad

.. Petitioner

vs.

Shankar S. Jadhav and ors.

.. Respondents

Mr. I.M. Khairdi for the Petitioner

Mr. K.J. Phakade for Respondent No.1.

CORAM : M. S. SONAK, J.

DATE : 23 APRIL 2019.

ORAL JUDGMENT :-

1] Heard Mr. I.M. Khairdi, learned counsel for the petitioner and Mr. K.J. Phakade, learned counsel for respondent No.1.

2] On 14th September 2015 this Court made the following order.

“1 Heard Shri Khairdi, the learned counsel appearing for the Petitioner.

2 Issue notice to the Respondents, returnable on 12/10/2015. In addition to service of notice through Court, the advocate for the Petitioner shall serve a private notice by Registered Post A.D. and/or by Courier service and/or by hand delivery on the Respondents and shall file affidavit of service before the returnable date.

3 Prima facie the finding of the Executing Court that Judgment Debtor No.1 is liable to pay only Rs. 5 lacs, seems to be erroneous having regard to the terms of the compromise which was arrived at between the parties before the Maha Lokadalat. Hence the parties are put to

notice that the above Writ Petition may be heard and disposed of finally at the stage of admission.”

3] In view of the aforesaid order, Rule. Rule is made returnable forthwith, with the consent of and at the request of learned counsel for the parties.

4] The challenge in this petition is to the order dated 20th July 2015 made by the Executing Court, the operative portion of which, reads as follows:

“The J.D. No.1 is directed to deposit cost of Rs.13,39/-. The E.P. Will be closed in full satisfaction once this amount is deposited.”

5] The petitioner's grievance is really against the refusal on the part of Executing Court to direct the respondent-judgment debtor to pay an amount of Rs.30,000/- in terms of consent decree dated 12th April 2014.

6] From the impugned order, it is apparent that the learned Executing Court has read the consent decree to mean that the respondent – judgment debtor was liable to pay to the petitioner – decree holder a total amount of Rs.5 Lakhs payable by way of four installments of Rs.1,25,000/-

each on or before the dates stipulated in the consent decree. Learned Trial Judge has therefore, noted that though there was some default/delay in payment of first installment, the judgment debtor made good that default and in fact paid the remaining installment of Rs.1,25,000/-, even before the due date specified in the consent terms. On this basis, learned Trial Judge has concluded that there was no further obligation upon the respondent – judgment debtor to pay an additional amount of Rs.30,000/-, since, this amount would become payable only in the event the respondent – judgment debtor were to commit defaults.

7] According to me, from the perusal of the consent decree, it is clear that the total amount which the respondent – judgment debtor had to pay to the petitioner – decree holder was Rs.5,30,000/- and not merely Rs.5 Lakhs. This is clear from reading clause (4) of the consent terms, which provides that the last installment payable by the respondent – judgment debtor was Rs.1,25,000/- plus Rs.30,000/-, i.e., total amount of Rs.1,55,000/- on or before 30th September 2016. No doubt, in this case, after initial default/delay, the

respondent – judgment debtor did pay the remaining installment of Rs.1,25,000/- before the stipulated dates. However, the last installment was supposed to be Rs.1,55,000/- and not merely Rs.1,25,000/-. There is nothing in the consent terms, which speaks about amount of Rs.30,000/- payable only in case of default. This amount, even otherwise, was payable.

8] Accordingly, the impugned order is liable to be modified and the respondent – judgment is liable to be directed to pay amount of Rs.30,000/- to the petitioner – decree holder within a period of six weeks from today. There is no question of awarding any interests on this amount, particularly, since the record indicates that the respondent – judgment debtor had pre-paid the earlier installments and to that extent, the petitioner - decree holder was the beneficiary of this pre-payment. However, if the amount of Rs.30,000/- is not paid by the respondent – judgment debtor to the petitioner - decree holder within six weeks from today, then, this amount of Rs.30,000/- will carry interest at the rate of 7% per annum till the date of effective payment.

9] Rule is accordingly, made partly absolute in the aforesaid terms. There shall be no order as to costs.

10] All concerned to act upon an authenticated copy of this order.

(M. S. SONAK, J.)