

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 14083 OF 2018

Sou. Kamal Suresh Bhujbal

..Petitioner

V/s.

Smt. Saraswati Narayan Pawar & Anr.

..Respondents

Mr. Sartheek S. Diwan, Advocate for the Petitioner.

Mr. H.V. Kode & Mr. Anand Botre, Advocate for the Respondent No. 2.

CORAM : S.C. GUPTE, J.

DATED : 18th July, 2019.

P.C.

This writ petition challenges an order passed by Adhoc District Judge, Pune on 26.10.2018. The order was passed in the Petitioner's appeal challenging the dismissal of her suit seeking specific performance of an agreement for sale purportedly executed in her favour by Respondent No.1 herein. Her suit was dismissed inter alia on the ground of the bar of limitation. In her appeal, the Petitioner prayed for stay of execution of a decree passed in another suit in favour of Respondent No.2 herein, who was the Plaintiff in that other suit. The impugned order was passed by the appellate court on that application.

2. The Petitioner claims to be an agreement purchaser of the suit property in pursuance of an agreement for sale executed in her favour by Respondent No.1. Respondent No. 2 herein claims to be a purchaser of the suit property under a sale deed executed by Respondent No. 1 and had filed Regular Civil Suit No. 50 of 1998 seeking possession of the suit property on the basis of that sale deed. The suit of Respondent No. 2 was decreed; the Petitioner herein was directed to handover possession of the suit property to Respondent No. 2. Being aggrieved, the Petitioner preferred an appeal from that decree, being Appeal No.706 of 2001. That appeal was dismissed on 29.08.2003. While dismissing the appeal, the appellate court granted liberty to the Petitioner to file her own separate suit seeking specific performance of the alleged agreement for sale between her and Respondent No. 1 herein.

3. The Petitioner's suit, being Regular Civil Suit No. 35 of 2006, was dismissed by the trial Court, as mentioned above, inter alia on the ground of bar of limitation. The Petitioner's appeal, being Regular Civil Appeal No. 321 of 2018, has been pending before the District Court. In that appeal, the Petitioner made the present application seeking stay of execution of the decree passed in the suit of Respondent No. 2, namely, Regular Civil Suit No. 50/1998, which decree, as noted above, was subsequently confirmed in appeal in Regular Civil Appeal No.706 of 2001. The application of the Petitioner was rejected by the District Court. That order is in challenge in the present writ petition.

4. The impugned order passed by the District Court was inter alia on the ground that stay of execution of a decree passed in another suit (i.e. the suit of Respondent No. 2 herein) and confirmed in appeal cannot be granted in the Petitioner's suit. The Petitioner was a party to that suit. The suit was for possession. The suit was decreed and the trial court ordered the Petitioner herein to deliver the possession of the suit property to Respondent No. 2 herein. The Petitioner's appeal from that decree was dismissed by the Appellate Court. Respondent No. 2 is now seeking execution of that decree. The execution of that decree cannot be stayed in the Petitioner's appeal from dismissal of her own suit for specific performance.

5. Besides, there is prima facie merit in the Respondents' case on the bar of limitation so far as the Petitioner's suit is concerned. The Petitioner's agreement is of 19.09.1996. Despite the agreement for sale, her vendor, Respondent No.1 herein, had executed a sale deed in favour of Respondent No. 2 herein on 03.02.1997. The suit of Respondent No. 2 seeking possession of the suit property on the basis of that sale deed was filed in 1998 and was decreed on 23.07.2001. The Petitioner's appeal from on decree was dismissed by the appellate court on 29.08.2003. In the premises, the Petitioner's suit filed in 2006 is prima facie barred by the law of limitation.

6. The only answer that learned Counsel for the Petitioner has on limitation is that the appeal court, while dismissing the Petitioner's appeal from the decree passed in favour of Respondent No. 2 in Regular Civil Suit No. 50 of 1998, had granted liberty to the

Petitioner to file her own suit seeking specific performance of her agreement for sale. Prima facie, grant of liberty cannot have the effect of extending the period of limitation for filing of the Petitioner's own suit.

7. In the premises, there is no warrant for interfering with the impugned order passed by the District Court in the Petitioner's appeal. The writ petition is, accordingly, dismissed.

8. At the request of the parties, however, the hearing of the Petitioner's appeal, being Regular Civil Appeal No. 321 of 2018, is expedited. The Appeal Court is requested to disposed of the Appeal as expeditiously as possible and preferably within a period of six months from today.

9. Learned Counsel for the Petitioner submits that his client may, in the facts of the case, have liberty to apply to the Executing Court for stay of execution of the decree passed in favour of Respondent No. 2 in the latter's suit. The Petitioner may apply for such stay, if so advised. All rights and contentions on merits are, however, kept open.

(S.C. GUPTE, J.)