

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.3160/2017

Pawan S/o Vijayrao Deshmukh
..VS..
Maheshkumar Laxmanbai Patel

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri R. J. Shinde, Advocate for the petitioner

CORAM : Z.A.HAQ, J.
DATED : 18/06/2019

None appears for the respondent.

2] Heard Shri R. J. Shinde, Advocate for the petitioner.

3] The Special Civil Suit No. 14 of 2010 filed by the respondent was decreed ex-parte. The petitioner had filed an application praying that the ex-parte decree be set aside. During the pendency of this application, decree holder proceeded with the execution and therefore, judgment debtor filed an application praying that the execution proceedings be stayed till disposal of the restoration application. On this application, the executing Court passed the impugned order and stayed the execution proceedings till disposal of restoration application, however, on condition that the judgment debtor shall furnish bank guarantee for Rs.2,00,000/-.

4] On 11/07/2017, while directing issuance of notice to the respondent, this Court has granted interim order in favour of the petitioner accepting the submissions made on behalf of the petitioner that instead of furnishing bank guarantee for Rs.2,00,000/-, the petitioner shall furnish surety/security for Rs.2,00,000/-. After 11/07/2017, the petition is not heard.

5] Learned Advocate for the petitioner informed that the petitioner has not furnished surety/security as assured while seeking interim order on 11/07/2017. It is further stated that the restoration application is also pending. Learned Advocate for the petitioner states that for want of instructions he is not in position to point out whether restoration application continues to pend. It is not known whether the restoration application is pending because of failure on the part of the petitioner to prosecute it diligently or for some other reason.

6] In the above facts, I find that there are no bonafides on the part of the petitioner. Even otherwise, the impugned order does not suffer from any illegality or error of jurisdiction which necessitates interference of this Court in the extra-ordinary jurisdiction.

7] Hence, the writ petition is dismissed with costs quantified at Rs.20,000/-. The petitioner shall deposit the amount of costs of Rs.20,000/- before the executing Court till 15/07/2019. On deposit of this

amount, it be given to the respondent-decree holder. If the petitioner fails to deposit the amount of Rs.20,000/- before the executing Court till 15/07/2019, the executing Court shall ensure that the amount is recovered from the petitioner within one month.

(Z.A.HAQ, J.)

Namrata