

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

WRIT PETITION NO. 2061 Of 2017

Premchand S/o Ramchand Chourasia

..VS..

Smt.Umrao W/o Sheikh Mehboob (Dead) thr. LR's and ors.

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

Court's or Judge's orders

Shri Masood Shareef, Adv. for the petitioner.
Shri G.N. Khanzode, Adv. for the respondents.

CORAM : Z.A.HAQ, J.

DATED : 23rd July, 2019

Heard.

The facts of the present case are very peculiar. By the judgment dated 07.01.1998, the trial Court decreed the claim of the petitioner (plaintiff) for specific performance of agreement in the following terms :

“Order

Suit is decreed in the following terms :

All the defts do execute the sale deed of the suit property in favour of the pltf by receiving balance consideration of Rs. 65,400/-.

Plaintiff shall deposit remaining balance amount of Rs. 65,400/- in the court within three months from toady.

If the defendants fail to execute the sale deed in favour of the plff., plff is at liberty to get it executed through court.

Defendant shall handover the possession of the suit property to the plaintiff.

Defendant shall pay the costs of the suit and bear their own.

Decree be drawn up accordingly.”

The defendants have not filed appeal against the judgment and decree passed by the trial Court. The plaintiff failed to deposit the balance amount of Rs.65,400/- within 3 months from 07.01.1998. On or about 17.10.1998, the plaintiff had filed the application under Section 148 of the Code of Civil Procedure praying that time to deposit the balance amount of consideration, be extended. This application filed by the plaintiff under Section 148 of the Code of Civil Procedure was dismissed for want of prosecution on 08.02.2002. The plaintiff had filed the application praying for restoration of the application filed by him under Section 148 of the Code of Civil Procedure. The application came to be allowed sometime in 2014 and the application filed by the plaintiff under Section 148 of the Code of Civil Procedure came to be restored.

On 09.06.2016, the trial Judge had passed the order granting 30 days from 09.06.2016 to the decree holder to deposit the balance amount of consideration i.e. Rs. 65,400/-. In this order, the trial Judge had recorded that the order will not create any equity in favour of the plaintiff nor it would enable the plaintiff to plead his claim to be within limitation, which otherwise appeared to be time barred.

It is relevant to note that the order dated 09.06.2016 was passed by the trial Court without issuing any notices/summons to the defendants/judgment debtors.

After the order dated 09.06.2016 was passed, the plaintiff deposited an amount of Rs. 65,400/- on 13.06.2016 and then filed proceedings to execute the decree. These execution proceedings are dismissed by the impugned order. The executing Court has recorded that the decree passed in Special Civil Suit No. 29 of 1995 is preliminary decree and cannot be enforced. The learned advocate for the petitioner argued that the executing Court has committed an error of jurisdiction by dismissing the execution proceedings on the ground that the decree is preliminary decree and it is not enforceable.

According to the petitioner, the judgment debtors have not filed any application as per Section 28 of the Specific Relief Act, 1963, and by the order dated 09.06.2016, the trial Court permitted the plaintiff/decreed holder to deposit the balance amount of consideration and the balance amount has been deposited within time as per the order dated 09.06.2016 and therefore, the execution proceedings cannot be dismissed.

Considering the facts of the case, I find that there has been gross negligence on the part of the plaintiff/decreed holder in prosecuting the claim. By the judgment dated 07.01.1998, while granting decree, the trial Court directed the plaintiff to deposit the balance amount of Rs.65,400/- within 3 months. The plaintiff failed to deposit the amount within time. The plaintiff had filed the application for extension of time to deposit the amount, but it was filed after 9 months and 10 days. This application was also dismissed for want of prosecution, and then the application filed by the plaintiff praying that the application under Section 148 of the

Code of Civil Procedure be restored, was not prosecuted diligently and was pending for about 12 years. The order dated 09.06.2016 by which the trial Court permitted the plaintiff to deposit the balance amount of Rs.65,400/- was also passed at the back of the defendants/judgment debtors. In this petition, the plaintiff/deGREE holder cannot take any advantage of the order dated 09.06.2016 and seek to enforce the decree passed on 07.01.1998 which required the plaintiff to deposit the balance amount of Rs.65,400/- till 06.04.1998.

In the above facts, I am not inclined to exercise the extraordinary jurisdiction and to permit the petitioner/deGREE holder to enforce a decree which otherwise has become inexecutable because of the lapses on the part of the decree holder.

Hence, the writ petition is dismissed. In the circumstances, the parties to bear their own costs.

CIVIL APPLICATION (W) No. 1149 OF 2019

In view of the dismissal of the writ petition, this application praying for grant of early hearing does not survive. Civil application is dismissed accordingly.

JUDGE

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