

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

Writ Petition No.4673 of 2018

(Ramawatar Balwant Thakur and another .vs. Sou. Tarabai Haridas Urade)

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

Court's or Judge's orders.

Mr. M.A. Deo, Advocate for Petitioners.
Dr. R.S. Sirpurkar, Advocate for Respondent.

CORAM : Manish Pitale, J.
DATED : January 07, 2019.

By this writ petition, the petitioners (original defendants) have challenged order dated 19.04.2018 passed by the Court of Civil Judge, Senior Division, Chandrapur (Executing Court), whereby application filed by the sole respondent (decree holder) has been allowed and possession warrant has been issued for putting the respondent (decree holder) in possession of the suit property.

2. The respondent herein has filed the suit for specific performance pertaining to agreement dated 26.06.2007 against the petitioners herein, which stood decreed in her favour by judgment and order dated 27.07.2010 passed by the Court of Civil Judge, Senior Division, Chandrapur. The petitioners were directed to execute sale deed of the suit plot in favour of the respondent after accepting Rs.75,000/- towards consideration. In the event the petitioners failed to execute the sale deed in terms of the said decree, the respondent was granted liberty to get the same

executed through the Court by depositing the balance consideration in the Court.

3. It is undisputed that the said decree stood confirmed right upto the Hon'ble Supreme Court. Thereupon, the respondent filed an application at Exh.36 before the Executing Court for delivery of possession of suit property as sale deed already stood executed through the Court in terms of the aforesaid decree. In the said application, the respondent prayed for grant of delivery of possession of suit property in terms of Section 28(3) and 28 (4) of the Specific Relief Act, 1963.

4. In the said application filed on behalf of the respondent, the petitioners raised an objection that a perusal of the decree dated 27.07.2010 passed by the trial Court in favour of the respondent would show that there was no specific decree or direction given by the trial Court regarding handing over of possession of the suit property to the respondent. It was claimed that when the decree was limited only to execution of sale deed in favour of the respondent upon deposit of balance consideration, the executing Court could not go beyond the decree and grant possession of the suit property to the respondent.

5. By the impugned order dated 19.04.2018, the executing Court found that grant of relief of possession was an incidental relief to the decree of specific performance granted in favour of the respondent and,

therefore, the executing Court rejected the objection raised by the petitioners and issued warrant of possession in favour of the respondent and directed that the respondent be put in possession of the suit property in respect of the sale deed already executed.

6. In the present writ petition which challenges the aforesaid order of the executing Court, reliance was placed on behalf of the petitioners on judgment of the Hon'ble Supreme Court in the case of **Adcon Electronics Pvt. Ltd. .vs. Daulat and another** reported in **(2001) 7 Supreme Court Cases 698**, to contend that unless specific relief of possession was prayed in the suit filed by the respondent, as per Section 22(2) of the Specific Relief Act, 1963, the executing Court could not have directed the respondent to be put in possession of the suit property. While issuing notice on 31.07.2018, this Court granted stay of the warrant of possession issued in terms of the impugned order.

7. It was contended on behalf of the petitioners before this Court that as per the ratio of the judgment of the Hon'ble Supreme Court in the case of **Adcon Electronics Pvt. Ltd. .vs. Dault and another** (supra), unless a specific prayer was made for grant of possession and decree was granted in terms thereof, the respondent in the present case could not seek possession of the suit property for execution of the decree passed in her favour by the trial Court.

8. On the other hand, on behalf of the respondent, reliance was placed on judgment of this Court in the case of **Kisan .vs. Ragho** reported in **2007(4) Mh.L.J. 311**, wherein this Court took into consideration the aforesaid judgment of the Hon'ble Supreme Court in the case of **Adcon Electronics Pvt. Ltd. .vs. Daulat and another** (supra) and distinguished the same when a similar contention was raised before this Court. In the said judgment, this Court also relied upon the judgment of the Hon'ble Supreme Court in the case of **Babu Lal .vs. M/s Hazari Lal Kishori Lal** reported in **AIR 1982 Supreme Court 818**.

9. A perusal of the judgment of this Court in the case of **Kisan .vs. Ragho** (supra), shows that the contention sought to be raised on behalf of the petitioners in the present writ petition deserves to be rejected. It has been categorically held in the aforesaid judgment of this Court in the case of **Kisan .vs. Ragho** (supra) that the judgment in the case of **Adcon Electronics Pvt. Ltd. .vs. Dault and another** (supra) rendered by the Hon'ble Supreme Court was concerned more with the question as to what could be said to be "suit for land" for determining the jurisdiction of the Division Bench of the Bombay High Court under Clause 12 of the Letters Patent. It was laid down in the said judgment of this court that perusal of Section 28(3) of the Specific Relief Act, 1963 shows that in a suit for specific performance of contract, a decree holder may be entitled in appropriate cases for other reliefs

including the relief of delivery of possession of the property in question. The relevant portion of the said judgment of this Court reads as follows:-

“12. The Apex Court, while considering the provision is of [Section 28\(3\)](#) of the Specific Relief Act, has observed thus:

“Further [Section 28\(3\)](#) clearly contemplates that if the purchaser or lessee pays the purchase money or other sum which he is ordered to pay under the decree, the Court may on application made in the same suit, award the purchaser or lessee such further relief as he may be entitled to, Sub-clause (b) of Sub-section (3) of [Section 28](#), contemplates the delivery of possession or partition and separate possession of the property on the execution of such conveyance or lease. Sub-section (4) of [Section 28](#) bars the filing of a separate suit for any relief which may be claimed under this section. This is an additional reason why the Supreme Court should not interfere with the eminently just order of the High Court. The High Court had amended the decree passed by the first Appellate Court and passed a decree for possession not only against the transferors but also against their transferee, that is, the petitioner.”

It is thus clear that the Apex Court has clearly held that in view of Sub-section (3) of [Section 28](#) of the Specific Relief Act, it would be permissible for a party to claim a relief of possession or payment of the purchase money, as is ordered to be paid under the decree. If such payment is made and relief of possession is claimed, the Court would always be competent to grant such a relief. I further feel that, on the contrary, such a relief would be one

which would result in granting appropriate, just and proper relief in favour of a person in whose favour decree for specific performance is passed. In that view of the matter, I do not find any error in the impugned order.

13.I further find that it is travesty of justice that though the decree for specific performance of contract has been passed way back in the year 1988, the respondent-plaintiff has not been yet in a position to get the decree executed and get its fruits. In that view of the matter, the writ petition is found without merit and as such, it is dismissed."

10. Applying the aforesaid position of law to the facts of the present case, it becomes evident that the contention raised on behalf of the petitioners is without any substance and that, therefore, the writ petition deserves to be dismissed.

11. Accordingly, the writ petition is dismissed.

JUDGE