

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

Writ Petition No.5618 of 2018

**(Smt. Seema wd/o Yudhistir Kodwani and ors. .vs. Satish Laxmandas Ahuja
and ors)**

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

Mr. S.D. Khati, Advocate for Petitioners.
Mr. D.N. Dani, Advocate for Respondent No.1.

CORAM : Manish Pitale, J.
DATED : February 11, 2019.

By this writ petition, the petitioners (original judgment-debtors) have challenged order dated 17.07.2018 passed by the Joint Civil Judge, Senior Division, Nagpur (executing Court), whereby application moved by the petitioners for grant of stay of execution proceedings has been allowed, subject to the petitioners depositing amount of Rs.7,75,000/-, which is the principal decretal amount in the executing Court. According to the petitioners, in the facts and circumstances of the present case, imposition of the said condition is extremely harsh and onerous and that, therefore, the said order needs interference.

2. The respondent no.1 had filed suit for specific performance against the petitioners and other defendants, seeking specific performance of agreement dated 20.09.2007 in respect of the suit property. The aforesaid suit proceeded *ex parte* against the defendants and by judgment and order dated

15.12.2014, the trial Court partly decreed the suit by directing the defendants to jointly and severally pay the amount of Rs.7,75,000/- being the principal amount along with 12% interest P.A. to the respondent no.1 from the date of the filing of the suit till its full realisation.

3. The petitioners filed an objection to the execution of the aforesaid decree by raising objection before the executing Court and claiming that the evidence of the respondent no.1 and his witnesses was never challenged before the Court due to absence of proper representation of the objectors and that, therefore, the objection deserved to be sustained. On 16.08.2017, the executing Court rejected the objection raised on behalf of the petitioners. Thereafter, in September, 2017, the petitioners filed an application under Order 9 Rule 13 of the Code of Civil Procedure, 1908, for setting aside *ex parte* decree along with application for condonation of delay in preferring the said application. In the said application for condonation of delay, it was admitted on the part of the petitioners that they got knowledge of the *ex parte* decree on 16.04.2015. This demonstrates that despite having due knowledge of the decree on 16.04.2015, the petitioners merely raised an objection in the execution proceedings and they failed to take appropriate steps to file application for setting aside *ex parte* decree till September, 2017, which was after the objection raised on their behalf was rejected by the executing Court.

4. In September, 2017 itself, the petitioners also

moved an application for stay of the execution proceedings pending the application filed on their behalf under Order 9 Rule 13 of the C.P.C. and the application for condonation of delay filed along with the same. Thereafter, on 21.11.2017 an application was moved by the petitioners again for stay of the execution of the decree and in the alternative to keep warrant of attachment of movable properties in abeyance till decision on the application for setting aside *ex parte* decree. By the impugned order dated 17.07.2018, the executing Court allowed the application for grant of stay but imposed the aforesaid condition of depositing the principal decretal amount of Rs.7,75,000/- in the Court.

5. It is contended on behalf of the petitioners that the said condition is onerous and that since the petitioners had strong case for setting aside of the *ex parte* decree, the executing Court ought not to have imposed condition while granting stay of the execution proceedings. On the other hand, it is contended on behalf of the respondent no.1 that the decree granted by the trial Court specifically imposed interest @ 12 % P.A. on the aforesaid amount of Rs.7,75,000/- from the date of the filing of the suit till the realisation of the amount, which demonstrated that as on today the amount that the petitioners are required to pay under the said decree would be in the range of about Rs.17,00,000/-. This figure is not seriously disputed by the learned counsel appearing for the petitioners. On this basis, it is contended on behalf of the respondent no.1 that the condition imposed in the impugned order

cannot be said to be onerous particularly when it is admitted on record by the petitioners that they became aware of the decree passed against them on 16.04.2015 itself and that they first took a chance by filing an objection before the executing Court and upon rejection of the objection, they filed an application for setting aside *ex parte* decree along with an application for condonation of delay.

6. The facts of the present case demonstrate that the petitioners had not immediately approached the trial Court to file an application under Order 9 Rule 13 of the C.P.C. for setting aside the *ex parte* decree. It is an admitted position on record that they acquired knowledge, even according to the averments made in their application for condonation of delay, on 16.04.2014 about the decree passed against them. In the first instance, they filed an objection before the executing Court, which ultimately stood rejected on 16.08.2017 and it was only thereafter that the petitioners filed an application for setting aside decree along with an application for condonation of delay. The period of delay that has occurred in the present case is substantial and the matter is being pursued before the trial Court as regards the claims of rival parties on the question whether the delay deserves to be condoned.

7. In this situation, particularly when under the decree faced by the petitioners they are actually required to pay an amount of about Rs.17,00,000/- as on today, imposition of condition by the executing Court of

depositing Rs.7,75,000/- only i.e. the principal decretal amount for stay of execution proceedings, cannot be said to be either onerous or unreasonable. In these circumstances, this Court finds that there is no merit in the present writ petition. Accordingly, the writ petition is dismissed.

JUDGE

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