

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

920 WRIT PETITION NO.11012 OF 2017

PANKAJ SHAMLAL ATTAL
VERSUS
NITIN SUDHAKAR BIBWE AND ANOTHER

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Advocate for Petitioner : Mr. S.R.Sapkal h/f Mr. V.D.Sapkal.
Advocate for Respondent Nos.1 & 2 : Mr. Deshmukh H.D.
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CORAM : V. K. JADHAV, J.
DATE : 26.02.2020

PER COURT :-

1. Heard both the sides.
2. Leave to correct the prayer clause 'B'.
3. The petitioner is the original plaintiff. The petitioner has instituted the suit before the Civil Judge Senior Division, Newasa. However, before registration of the suit, the office has raised the objections on 21.02.2014 about expiry of the Court Fees Stamp attached to the plaint and so also filing of the old 7/12 extract. On 04.03.2014, the petitioner-plaintiff has filed an application before the Court, seeking time to furnish the fresh Court Fees Stamp so also the fresh 7/12 extract.

However, on 10.03.2014, the learned Civil Judge Senior Division has recorded the absence of the petitioner-plaintiff and on 02.04.2014 rejected the application, as plaintiff failed to comply with the order. Hence, this Writ Petition.

4. The learned counsel for the petitioner submits that the suit has been instituted for Specific Performance of Contract in respect of the immovable property and though the plaintiff is ready to furnish the fresh Court Fees Stamp and fresh 7/12 extract, his application seeking time, came to be rejected and ultimately the suit is also not registered. The learned counsel submits that the petitioner is ready to comply with the office objections within two (2) weeks from the date of the order of this Court.

5. The learned counsel for the respondents submits that in terms of the office objections, the petitioner filed the application and sought the time to pay fresh Court Fees Stamp and furnish new 7/12 extract. On 04.03.2014, the time was granted till 07.03.2014 and thereafter on 10.03.2014, the petitioner absent and the matter thus was posted for further orders. Thereafter, on 02.04.2014, the Court has rejected the

plaint, as the petitioner failed to comply with the order. The learned counsel submits that on earlier occasion, the petitioner had instituted the suit, which was withdrawn and thereafter the petitioner has instituted the present suit for Specific Performance of Contract. The suit claim is time bound. Furthermore, the petitioner has not complied with the office objections and ultimately his plaint came to be rejected. In view of the same, this Writ Petition is liable to be dismissed.

6. On careful perusal of the record and the orders passed by the Trial Court time to time, I do not find any order passed by the Trial Court rejecting the plaint under Order 7 Rule 11 of the Civil Procedure Code. It appears that only the office has raised the objections and there is non-compliance of the office objections. It further appears that the Civil Judge Senior Division, Newasa has passed the order on 05.04.2017, below application in suit (Kaccha No.40 of 2014). It has been stated in the said order that the plaint is already rejected and therefore, it cannot be taken on record by accepting the Court Fees. However, I do not find any such order rejecting the plaint under Order 7 Rule 11 of the Civil Procedure Code. Furthermore, the petitioner has shown his ready and

willingness to furnish the fresh Court Fees Stamp and so also the fresh 7/12 extract. However, instead of granting the time as contemplated under Order 7 Rule 11 of the Civil Procedure Code, the Trial Court has simply passed the order on 02.04.2014 to the effect that the plaintiff failed to comply the order, hence rejected and filed. So far as the objection about the limitation raised by the other side is concerned, the respondents are always at liberty to raise that objections on registration of the suit. In view of the same, I proceed to pass the following order :

ORDER

- (i) The Writ Petition is allowed in terms of prayer clause 'B' and 'C'.
- (ii) The petitioner shall deposit the fresh Court Fees Stamp and fresh 7/12 extract as per the office objections within two (2) weeks from the date of this order.

(V. K. JADHAV, J.)

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vmk/-