

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 7200 OF 2019

Ganesh Ramdas Zambre,

Age: 32 years, Occu. Agriculturist,

R/o. : Holkarwadi, Uruli Devachi,

Tal. Haveli, Dist. Pune.

...Petitioner

Vs.

1 Dnyanoba Parasram Kamthe,

Age : 51 years. Occu. Agriculturist,

R/o : Fursungi, Tal. Haveli,

Dist. Pune.

2 Vitthal Prasram Kamthe,

Age : 53 years, Occu. Agriculturist,

R/o : Fursungi, Tal. Haveli,

Dist. Pune.

3 Ku. Sakshi Pandurang Kamthe,

Age: 14 years. Occu. Education,

Through Ad-litem Guardian -

The Nazir, Civil Judge, Senior Division,

Pune, Dist. Pune.

4 Rupali @ Seema Pandurang Kamthe,

Age : 32 years, Occu. : Household,

R/o. : Holkarwadi, Uruli Devachi,

Tal. Haveli, Dist. Pune.

...Respondents

Mr. Rahul Kadam, Advocate for the Petitioner.

Mr. T.S. Shendge, Advocate for Respondent Nos.1 and 2.

CORAM : A.S. GADKARI, J.

DATE : 11th MARCH, 2020.

P.C. :-

By the present Petition under Article 227 of the Constitution of India, the Petitioner has impugned Order dated 28th March, 2019 passed below Exh.45 in Special Darkhast No.54 of 2012 by the learned Civil Judge, Senior Division, Pune, rejecting the said Application filed by the Petitioner for setting aside the Order of appointment of 'Nazir' as next friend/ad-litem guardian of minor girl namely Ms. Sakshi Pandurang Kamthe, Respondent No.3/Original Defendant No.2 and for the appointment of Petitioner as ad-litem guardian of the Respondent No.3, to enable him to protect the interest of Respondent No.3 by defending Special Darkhast No.54 of 2012, arising out of Special Civil Suit No. 2258 of 2010.

2 Heard Mr. Kadam, learned counsel for the Petitioner and Mr. Shendge, learned counsel for the Respondent Nos.1 and 2. Perused the record annexed to the Petition.

3 The record reveals that, the Suit filed by Respondent Nos.1 and 2 bearing Special Civil Suit No. 2258 of 2010 for specific

performance of contract on the basis of an agreement of sale dated 9th June, 2009 executed by the Respondent No. 4 for herself and on behalf of her minor daughter i.e. the Respondent No.3 herein in favour of Respondent Nos.1 and 2 and for other consequential reliefs, was decreed by the 3rd Joint Civil Judge, Senior Division, Pune, by its Judgment and Order dated 19th October, 2011. The Trial Court was pleased to decree the Suit for specific performance of contract to the extent of share of Defendant No.1 i.e. Respondent No.4 herein, with cost.

4 It is an admitted fact on record that, on the date of passing of the said decree, the Defendant No.2/Respondent No.3 Ms. Sakshi Pandurang Kamthe was a minor, aged about 7 years.

5 The record further indicates that, the Petitioner Nos.1 and 2 being decree holders filed Special Darkhast No.54 of 2012 for execution of decree dated 19th October, 2011 passed in Special Civil Suit No.2258 of 2010. That, the Respondent No.4/Original Defendant No.1 had executed sale-deed on 18th September, 2014 of her share of property in furtherance of the said decree. The Respondent Nos.1 and 2 thereafter filed an Application below Exh.38 on 18th November, 2014 in Special Darkhast No.54 of 2012 for direction, to the Respondent No.4 to execute decree of the Suit property with respect to the share of Respondent No.3 (Original

Defendant No.2) and if the Respondent No.4 fails to file an Application under Section 8 of the said Act, to appoint an officer of the Court namely 'Nazir' as next friend of Respondent No.3 and the said 'Nazir' may be permitted to execute the sale-deed on behalf of Respondent No.3.

6 That, on 6th January, 2015, the Respondent No.4 filed an Application under Order 32 Rule 11 of the Code of Civil Procedure, requesting the Court to permit her to retire as guardian of Respondent No.3 on the ground of personal reasons and that, she was unable to perform her duty as guardian of Respondent No.3. The Executing Court, by its Order dated 31st January, 2015 directed that, both the Applications below Exh. 38 and 40 be heard and decided together. The Respondent Nos.1 and 2 opposed the said Application by filing their reply dated 30th January, 2015 and prayed to the Court to reject the Application filed by the Respondent No.4 below Exh.40. The Executing Court decided both the said Applications below Exhs. 38 and 40 by its common Order dated 30th March, 2015. The learned Judge of the Executing Court by its said Order, allowed Application below Exh.38 and appointed 'Nazir' of the said Court to comply with the decree in respect of Respondent No.3. The learned Judge allowed Application below Exh.40 filed by the Respondent No.4 and permitted her to retire as guardian of the Respondent No.3.

7 The Petitioner thereafter filed an Application below Exh.45 in Special Darkhast No.54 of 2012, praying that, the appointment of ‘Nazir’ (below Exh. 38) as next friend of Respondent No.3 may be set aside and cancelled and the Petitioner may be appointed as ad-litem guardian for the Respondent No.3, to enable him to protect the interest of the said minor by defending the said proceedings. The Respondent Nos.1 and 2 filed their detailed reply dated 5th October, 2017 below Exh.49, to the said Application below Exh.45 filed by the Petitioner.

 The Trial Court by its impugned Order dated 28th March, 2019 has rejected the said Application.

8 Mr. Kadam, learned counsel for the Petitioner submitted that, the Respondent No.3 herein is the niece of the Petitioner and to protect her interest, he had filed the said Application below Exh.45 in Special Darkhast No.54 of 2012. He submitted that, the said Application below Exh.45 was filed for setting aside the Order of appointment of ‘Nazir’ passed below Exh.38 and for the appointment of the Petitioner as ad-litem guardian of the Respondent No.3. He submitted that, the Nazir is not in a position to oppose the Application filed under Section 8 of the said Act and to oppose the execution of decree passed in Special Civil Suit No.2258 of 2010. He therefore, prayed that, impugned Order passed

below Exh.45 in Special Darkhast No.54 of 2012 may be set aside by allowing the present Petition.

9 A bare perusal of the said Application filed by the Petitioner below Exh.45 would clearly indicates that, it is as vague as possible and does not disclose any genuine reason for its filing.

At the outset, it is to be noted here that, during the course of arguments, this Court repeatedly asked the learned counsel for the Petitioner as to what is the 'exact' interest, the Petitioner is having in the litigation, particularly in view of the fact that the biological mother of the minor Ms. Sakshi, i.e. the Respondent No.3 is alive and is capable to take care of her daughter and to further protect her interest, the Trial Court in the said Darkhast Proceedings No.54 of 2012 has appointed Nazir of the said Court as her next friend/guardian. No plausible explanation is being offered by the Petitioner about his alleged interest in the present litigation except repeatedly submitting that, he intends to protect the interest of the said minor child. With a view to prove his bonafide in protecting the alleged 'interest' of the said minor i.e. Respondent No.3, this Court suggested the Petitioner to deposit substantial amount in the account of Respondent No.3, to which the Petitioner flatly refused.

10 It will not be out of way to place the fact on record that, the

Petitioner has also preferred Writ Petition No. 3686 of 2019 impugning an Order dated 5th January, 2019 passed below Exh. 23 in Civil Miscellaneous Application No.369 of 2017, rejecting the said Application for stay of said further proceedings and for his appointment as ad-litem guardian/next friend of Respondent No.3 in place of 'Nazir' appointed by the said Court for execution of decree dated 19th October, 2011. This Court today has dismissed the said Petition by an elaborate Order by observing that, the intention of the Petitioner in filing the said Application below Exh.23 is malafide and not genuine. That, the said Application filed by the Petitioner below Exh.23 was frivolous and vexatious Application. The observations made by this Court against the Petitioner in Writ Petition No.3686 of 2019 are squarely and also *mutatis mutandis* applicable in the present Petition too.

11 In view thereof, this Court finds that, the Trial Court has rightly rejected the said Application below Exh.45. There is no error either in law or on facts, committed by the Trial Court, while rejecting the said Application below Exh. 45.

The Petition being de hors of merits is accordingly dismissed.

Sanjiv S.
Mashalkar
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by Sanjiv S.
Mashalkar
Date:
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(A.S. GADKARI, J.)