

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

WRIT PETITION NO.979 OF 2021

Padminbai w/o Dajiba Mogare
Age : 60 years, Occu : Agri
R/o Rajapur, Tq. Georai & Dist. Beed.

... **PETITIONER**
(Orgi. Plaintiff)

VERSUS

Shantabai w/o Sheshrao Khune,
Age : 78 years, Occu: Agri,
R/o. Rajapur, Tq. Georai & Dist. Beed.

... **RESPONDENT**
(Orig. Defendant)

...

Advocate for Petitioner : Mr. Vilas P. Savant
Advocate for Respondent : Mr. Y.K. Bodade

...

CORAM : MANGESH S. PATIL, J.

DATE : 30.11.2021

JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith. At the request of the parties, the matter is heard finally at the stage of admission.

2. The petitioner has filed a suit seeking specific performance of an agreement to sell an immovable property. The suit was filed in the year 2012. By moving Application (Exhibit-54) she requested the trial court to permit her to deposit the balance amount of consideration of Rs.60,000/-, perhaps to show that she is ready and willing to perform her part of contract. The application has been rejected by the order under challenge.

3. The learned advocate for the petitioner submits that though belatedly the petitioner intends to deposit the money to demonstrate her

willingness to purchase the property. The request was innocuous. No prejudice was likely to be caused to the respondent and still the learned Judge has rejected the Application by the order which is blatantly illegal.

4. The learned advocate for the respondent submits that by virtue of provision of Section 16 (c) of the Specific Relief Act, 1963 an issue regarding petitioner's readiness and willingness to perform her part of the contract has already been framed. At a belated stage she is trying to create evidence to demonstrate that she has been ready and willing to perform her part under the contract. The suit was filed in the year 2012 and the application has been filed in the year 2019. A serious prejudice would be caused to the respondent if the petitioner is allowed to deposit the money. He would further submit that if at all she was intending to perform her part of the contract she could have made such a request on the date of filing of suit. That having not been done there is no legality in the impugned order refusing to permit her to deposit the money.

5. Certainly, in view of the provisions of Section 16(c) of the Specific Relief Act, a person claiming specific performance has to demonstrate that he has ever been ready and willing to perform his part under the contract. Obviously Issue No.6 has also been framed in that regard.

6. However, Section 16(c) does not require a person claiming specific performance to deposit the balance amount of consideration. Neither there is any principle that merely because a person deposits the

money that is sufficient per se to demonstrate his readiness and willingness to perform his part of the contract. Such readiness and willingness has to be established on the basis of all the attending facts and circumstances and mere deposit of money *ipso facto* would not be sufficient for the trial court to decide the issue.

7. The learned Judge while rejecting the application seems to have been swayed away by the fact that the request to deposit balance amount of consideration was made belatedly. That could not have been the sufficient ground to refuse to permit the petitioner to deposit the money. What is the effect of such deposit is the matter which would have to be gone into and decided while deciding the suit itself. The ground on which she has been refused permission to deposit the money are clearly indicative of the fact that instead of keeping the issue open he has proceeded to decide the effect of such deposit. This is not the correct approach. The stage was not ripe for making such observations and the issue could have very well been reserved for final adjudication of Issue No.6.

8. Apart from the above state of affairs, as can be seen from the stand of the respondent who is defending the suit, he has denied existence of any agreement about which a specific performance is being claimed. If such is the state of affairs, it cannot be said that any prejudice was likely to be caused to him merely because the petitioner intended to deposit the money in the Court.

9. Considering all the aforementioned facts and circumstances, in

my considered view, the impugned order is liable to be quashed and set aside keeping open the effect of such deposit to be made to be considered while deciding Issue No.6 regarding readiness and willingness.

10. The Writ Petition is allowed. The impugned order is quashed and set aside. The trial court shall now permit the petitioner to deposit the money in the Court. The effect of deposit shall be considered by the trial court while deciding the Issue No.6.

11. The Rule is made absolute in the above terms.

(MANGESH S. PATIL, J.)

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