

drp

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8885 OF 2014

Pravin s/o Dayasagar Jain
Age – 44 years, Occ – Agriculture & Business
R/o Subhash Road, Beed,
District - Beed

PETITIONER

VERSUS

1. Ashrabai w/o Saudagar Chavan
Age -64 years, Occ – Household
R/o Maujwadi, Taluka & District – Beed
2. Saudagar s/o Anna Chavan
Age – 69 years, Occ – Agriculture
R/o As above

RESPONDENTS

.....

Dr. Swapnil D. Tawshikar, Advocate for the petitioner
Ms. Priyanka Deshpande, Advocate for respondents No.1 & 2

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 16th NOVEMBER, 2021

JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the parties.
2. Petitioner, by this writ petition, challenges order dated 10th July, 2014 passed by learned Civil Judge, Senior Division, Beed below Exhibit-42/A in Special Civil Suit No. 38 of 2012, thereby refusing extension of time to the petitioner to deposit the amount.

3. Petitioner filed Special Civil Suit No.38 of 2012 seeking decree of specific performance of contract against the respondents. The suit came to be decreed in favour of the petitioner by judgment and decree dated 13th March, 2014. The petitioner was directed to deposit an amount of Rs.22,90,000/- within one month from the date of the order and respondent No.1 was directed to execute registered sale deed of the suit land Gat No.72 admeasuring 8 Hectare 72 Are to the extent of 80 Are, situated at Village Ghosapuri, Taluka and District – Beed, in favour of the petitioner.

4. The petitioner filed application Exhibit-40 in Special Civil Suit No. 38 of 2012 seeking extension of time to deposit the amount of Rs.22,90,000/- (for short “the said amount”). By order dated 11th April, 2014 extension of one month was granted to the petitioner. Thereafter, again, time of two weeks was granted to the petitioner to deposit the said amount vide order dated 13th June, 2014. The petitioner thereafter preferred application Exhibit-42 seeking extension of one month to deposit the said amount, which came to be rejected by the trial court on 10th July, 2014. The said order is impugned in the present petition.

5. In the meanwhile, Regular Civil Suit No. 331 of 2014 was

filed by the daughter of the respondents, namely, Kausalyabai Santram Yadav against respondents and the petitioner, claiming to be purchaser of suit property from respondent No. 2 and seeking perpetual injunction and declaration that decree passed in favour of the petitioner in Special Civil Suit No. 38 of 2012 is void and not binding on her. Regular Civil Suit No. 331 of 2014 came to be dismissed in default and its proceedings were closed vide order dated 12th October, 2017.

6. Learned advocate for the petitioner submits that the petitioner was and is ready and willing to deposit the amount of Rs.22,90,000/-. He submits that due to penency of Regular Civil Suit No. 331 of 2014, the petitioner could not, at earlier point of time, deposit the said amount.

Learned advocate for the respondents submits that if the petitioner deposits the said amount, the respondents are ready to execute registered sale deed and hand over possession of suit land to the petitioner. She, however, further submits that taking into consideration the fact that the decree was passed in the year 2014 and till date the said amount is not deposited by the petitioner, the respondents are entitled to receive interest @ 12% p.a. on the said amount.

7. Taking into consideration the fact that after the decree was passed in favour of the petitioner in Special Civil Suit No. 38 of 2012, Regular Civil Suit No. 331 of 2014 was filed, due to which the petitioner did not deposit the said amount and since the respondents have shown their willingness to execute the sale deed in terms of the decree, if the petitioner deposits the said amount together with interest, the petition deserves to be allowed. Hence, following order.

ORDER

- I. The writ petition is allowed in terms of prayer clauses "B" and "C".
- II. Impugned order dated 10th July, 2014 passed by Civil Judge, Senior Division, Beed below Exhibit-42/A in Special Civil Suit No. 38 of 2012 is hereby quashed and set aside.
- III. The petitioner is permitted to deposit before the trial court, an amount of Rs.22,90,000/- together with simple interest @ 6% with effect from 13th October, 2017, till the petitioner deposits the said amount.
- IV. On the petitioner depositing the said amount along with interest, the respondents shall execute the decree passed

in favour of the petitioner in Special Civil Suit No. 38 of 2012, in terms of the order passed by the trial court in the suit.

- V. Rule is made absolute in aforesaid terms with no order as to costs.

[NITIN B. SURYAWANSHI]
JUDGE

drp/wp8885-14