

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 120 OF 2021

Deoram Lala Mali

..APPLICANT

VERSUS

Shaikh Musa Sk. Nadar

(Died) Through L.Rs.

Sharifabi Shaikh Musa and Others

..RESPONDENTS

Mr. K.C. Sant, Advocate for applicant

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CORAM : R.G. AVACHAT, J.

DATED : 13th DECEMBER, 2021

PER COURT :

1. Heard.

2. The challenge in this revision application is to order dated 17th February, 2020 in execution proceeding being Special Darkhast No. 5 of 2016. It is the case of decree in a suit for specific performance of agreement of sale of immovable property. The Trial Court decreed the suit on 13th April, 2012 in following terms :-

1. *The suit is decreed with costs.*
2. *The defendant shall execute the sale-deed of the suit property on receiving remaining consideration Rs.8,49,000/- in favour of the plaintiff within two months. On his failure to execute the sale-deed, the plaintiff shall deposit the remaining consideration amount in the Court and get the sale deed executed*

in his favour. On failure of the plaintiff, the suit shall stand dismissed.

3. Decree be drawn up accordingly.

3. According to learned counsel for the applicant, the decree holder has not complied with the terms of the decree i.e. he has not deposited the amount of Rs.8,49,000/- within a period of two months.

4. The record, however indicates that the applicant herein had challenged the said decree in Regular Civil Appeal No. 39 of 2012. The first appellate Court has stayed the decree dated 13th April, 2012. Later on, the appeal came to be dismissed on 08th February, 2016. As such, the plaintiff – decree holder did not have an opportunity to comply with the decree. The executing Court has also observed in the impugned order that the decree holder has deposited the amount within time frame. In fact, when the decree was challenged in appeal, which was pending for more than two years, it was just difficult for the decree holder to comply with the decree when the execution thereof was stayed.

5. In view of the same, this Court finds no reason to interfere with the impugned order. Civil revision application, therefore, fails. Same stands disposed of accordingly.

(R.G. AVACHAT, J.)

SSD