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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1587 OF 2018

RAJENDRA GAJANAN NAGVEKAR

....PETITIONER

V/s.

ARUN BABURAO VELANKAR AND ANR

.....RESPONDENTS

Mr. Bhavesh Parmar a/w Mr. Devmani Shukla a/w Mr. Rajesh Sahani & Vivekanand Akshali for the Petitioner
Mr. Sanjiv A. Sawant a/w Mr. Abhishek Matkar for Respondent nos. 1 & 2

CORAM : NITIN W. SAMBRE, J.

DATE: AUGUST 26, 2021.

P.C.:

1] In a suit for specific performance of a registered agreement dated 27/11/1995, a consent decree came to be passed pursuant to the consent terms signed and tendered by the parties on 19/09/2009. Said consent terms provides for corresponding responsibility to be complied by each of the parties i.e. Judgment Debtor and Decree Holder.

2] Assurance for the payment of consideration within the prescribed time was not honoured by the petitioner, which has resulted into initiation of Special Darkhast No. 25/2010 by the respondent-decree holders.

3] Vide impugned order dated 11/01/2018 passed below Exh. 135, sale of the suit property under Order 21 Rule 64 of the Code of Civil Procedure, 1908 (Hereinafter referred to as 'CPC' for the sake of brevity) was ordered. As such, this petition.

4] Submissions of the learned counsel for the petitioner are, the consent terms based on which compromise decree passed under Order 23 of the CPC speaks of corresponding liability/responsibility to be discharged by the respondent-decree holder. According to him, apart from not settling the objection of third party who has claimed right in the suit property, the consideration which was due and payable, in fact, was duly paid. In view of non-compliance of the corresponding responsibility by the respondent, amount was withheld. Learned counsel would invite attention of this Court to

clause 5 of the consent terms which speaks of responsibility of the respondent-decree holder to neutralize the claim of third party, clause 11 measurement of the land and in case if any shortfall, compensate the petitioner at the rate of Rs. 25,000/- per Guntha.

5] According to learned counsel for the petitioner, Order 21 Rule 64 of CPC contemplates attachment of the property before ordering auction. In view of order dated 24/02/2015 passed below Exhibit 120, attachment ordered was set aside. That being so, necessary requirement under Order 21 Rule 64 of CPC is not complied with before ordering sale of the property.

6] One more contention of the learned counsel for the petitioner is, while passing the order impugned in exercise of powers under Order 21 Rule 64 of the CPC, court has not fixed the financial liability of the petitioner to be discharged and by vague observations has passed the order impugned. He would as such claim that executing court has read the decree in part and not as a whole.

7] Counsel for respondent would urge that petitioner-judgment debtor, from day one failed to discharge his responsibility as was agreed in the compromise decree and consent terms. The cheque issued for amount of Rs. 30 Lakhs issued immediately thereafter was dishonoured in 2009 and since then a demand about payment of consideration are not honoured. He would further claim that order of attachment still holds the field and same was never set aside in express terms by the executing court. Learned counsel then would urge that in case the land fall short of to which he has agreed, same could be looked into after the petitioner pays entire consideration. As such, according to him, petitioner is enjoying the property without parting entire consideration and that being so, petition is liable to be dismissed.

8] With the assistance of respective counsel, I have perused each of the terms of the consent terms dated 19/09/2009. Admittedly, said consent terms cast responsibility to be complied with by each of the party to the same. If consent terms is read minutely, burden is casted on the petitioner-judgment debtor to pay consideration and as

such, title stood vested in him. Admittedly petitioner-judgment debtor has failed to pay entire consideration as was agreed to as could be inferred from the record. Rather the cheque towards payment of consideration was dishonoured. Neither the amount of interest @ 18% is paid nor the balance consideration.

9] Though learned counsel for the petitioner has claimed that there is third party objection to the property in question, however, the fact remains that said objector's claim can be looked into at appropriate stage of the proceedings, however, same cannot act as rider on the right of the respondent-seller from receiving consideration from the petitioner. Petitioner-judgment debtor cannot take shelter of said development to frustrate the decree. The claim of the objector is not for entire suit property.

10] Apart from above, perusal of order dated 24/02/2015 passed below Exh. 120 wherein attachment was challenged, does not speak of setting aside of the order of attachment. Rather order of attachment still holds good. Contention that the order of attachment

was set aside was never canvassed before the court below i.e. executing court when the order impugned was passed. Petitioner for the first time has raised such contention before this Court. This Court from the order dated 24/02/2015 cannot infer that such order of attachment was set aside.

11] In the aforesaid background, it can be inferred that the very requirement under Order 21 Rule 64 of the CPC is very much satisfied as property stood attached and same continued till this date of proceedings.

12] This takes me to the last contention of the petitioner i.e. findings recorded by the court below are without any proper reasoning. The court was conscious to the fact that petitioner has not paid entire amount of consideration which has prompted the respondent to proceed ahead with the execution of the decree by invoking provisions of Order 21 Rule 64 of the CPC. The Decree speaks time bound responsibility of the petitioner-judgment debtor of payment of consideration to be completed by 30/10/2009. Failure to

pay consideration attracts interest at 18% per annum. As observed herein above, petitioner till this date has neither paid entire consideration nor the amount of interest as could be gathered from the observations made by the court below. Court below has worked out the liability of the petitioner on the date of the passing of the order i.e. on 11/01/2018 to be around Rs. 50,35,711/-.

13] As such, it could be inferred that court below while directing the sale of the property was conscious to the liability of the petitioner.

14] In the aforesaid background, I hardly see any illegality which warrants interference in extraordinary jurisdiction. Petition as such fails, stands dismissed.

[NITIN W. SAMBRE, J.]