

BDP-SPS-TAC

BHARAT
DASHARATH
PANDIT

Digitally signed
by BHARAT
DASHARATH
PANDIT
Date: 2021.09.04
13:26:50 +0530

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4926 OF 2021**

Chimaji Shivaji Ghorpade

....Petitioner

V/s

Dhannubi @ Nanhubi Ramzan

.....Respondent

Mr. N.J. Patil i/b Mr. Akshay N. Patil for the Petitioner.

Mr. Rohan P. Surve for the Respondent.

CORAM: NITIN W. SAMBRE, J.

DATE: SEPTEMBER 01, 2021

P.C.:-

1] In a suit for specific performance based on agreement for sale dated December 9, 1998 Petitioner/Defendant failed to adduce his evidence. As a consequence, his evidence was closed resulting into passing of the impugned order.

2] Mr. Patil, learned Counsel for the Petitioner/Defendant submits that default on the part of the Defendant in pursuing the suit diligently cannot be justified. However, in the interest of justice, a chance be given to the Petitioner to lead his evidence in time bound manner by putting the Petitioner/Defendant to reasonable conditions.

3] Mr. Surve, learned Counsel for the Respondent/Plaintiff would oppose the claim, as according to him, Plaintiff's evidence was closed way back in 2018.

4] Considered rival submissions.

5] It appears that suit is for specific performance and evidence of the Plaintiff is already closed.

6] Petitioner/Defendant has come out with defence of money lending transaction. In such an eventuality, it is for the Defendant to justify the said claim.

7] Conduct of the Petitioner as reflected from record thereby not cooperating with the Trial Court in disposal of the suit needs to be deprecated.

8] Since Mr. Patil, learned Counsel for the Petitioner, on instructions made a statement that Petitioner/Defendant shall not seek any adjournment and shall cooperate with the Trial Court for expeditious

disposal of the suit that too without seeking any adjournment, which is accepted as an undertaking, this Court is inclined to show indulgence.

9] In the aforesaid backdrop, in my opinion, in the interest of justice last chance can be granted to the Petitioner/Defendant with following order:-

ORDER

(a) Petitioner to deposit costs of Rs 25,000/- in the Court of Civil Judge, Junior Division, Ichalkaranji in pending Regular Civil Suit No.283 of 2014 within three weeks from today.

(b) Respondent shall be entitled to withdraw the said amount of costs unconditionally.

(c) Petitioner to furnish list of witnesses and shall produce the documents alongwith examination-in-chief within a period of three weeks from today alongwith costs to be paid.

(d) Any adjournment by the Petitioner on unreasonable ground shall be dealt with by saddling heavy costs which should not be in any case less than Rs 25,000/-.

(e) In the backdrop of aforesaid conditions Petition is allowed in terms of prayer clause (b).

(NITIN W. SAMBRE, J.)