

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2131 OF 2021

M/s Golden Horizon Promoters Petitioner
Pvt. Ltd., through its M.D.,
Mr. Dilip J. Girme

Vs.

Smt. Sapna Vilasrao Dhumal & Ors. Respondents

Mr. Girish Agrawal for Petitioner
Mr. Parag Dube Respondent Nos. 1 to 6.

Coram : NITIN W. SAMBRE, J.

Date : 6th JULY, 2021

P.C.:

1. Heard respective Counsel.
2. In a Special Civil Suit No. 331 of 2013 initiated on 2nd March, 2013 on the file of Civil Judge, Senior Division, Pune for specific performance, the Petitioner-Defendant suffered an order on 14th September, 2018 passed below Exhibit-51, an application under Order XI, Rule 14 of Code of Civil Procedure. The Petitioner were directed to

produce on record certified copy of the joint venture agreement, as referred to in the application, Exhibit 51.

3. Since the order below Exhibit-51 was not complied with, the Respondents-Plaintiffs moved an application, Exhibit 52 under Order XXXIX, Rule 11 of Code of Civil Procedure (Bombay Amendment for striking out the defence). The said application came to be allowed vide order dated 2nd August, 2019.

4. In spite of above order, the Petitioner has not immediately produced the agreement, as directed, however, on 19th December, 2020, moved for setting aside of an order passed below Exhibit 52 for striking out defence, which prayer was rejected vide impugned order dated 16th March, 2021. As such, this petition questioning the order dated 16th March, 2021 passed below Exhibit-56.

5. Mr. Agrawal, learned counsel appearing for the Petitioner would urge that it was a bonafide mistake on the part of the Petitioner-

Defendant in not complying with the order dated 14th September, 2018. According to him, there was no intention on the part of the Applicant to show any disrespect to the orders of the Civil Court. He would further claim that the provisions of striking out of defence under Order XXXIX, Rule 11 of Code of Civil Procedure ought not to have been justifiably invoked against the Petitioner, particularly when an adverse inference could have drawn against the Petitioner for non production of document. He would draw support from the judgment of this Court in the case of Zilla Parishad, Aurangabad and Another Vs. Punarjanma Rewinders and Electricals, reported in 2006 (6) Maharashtra Law Journal, page 661.

6. While countering the submissions, Mr. Dube, learned counsel appearing for Respondent Nos.1 to 6 would urge that the Petitioner is intentionally indulging in delaying tactics as the suit is of the year 2013, which is not taken to its logical end till date.

7. According to learned counsel, the Court below was sensitive to the non co-operative conduct of the Petitioner and as such

was justified in invoking the provisions of Order XXXIX, Rule 11 of Code of Civil Procedure for striking out defence. As such, he has sought dismissal of the petition.

8. Considered rival submissions.

9. It is not in dispute that the document as directed was produced by the Petitioner at a belated stage i.e. alongwith an application, Exhibit-56, on 19th December, 2020 i.e. after a delay of more than two years from the date of the order of production i.e. 14th September, 2018. Intentional delay in compliance can be inferred from the above event. It can be seen that even after the defence was struck out under Order XXXIX, Rule 11 of Code of Civil Procedure, by passing an order below Exhibit 52 on 2nd August, 2019, the Petitioner appears to have intentionally not complied with the order and rather delayed the suit proceeding for a period of 16 months.

10. In this background, this Court was not inclined to show any indulgence, however, Mr. Agrawal, learned counsel appearing for the

Petitioner has assured that the Petitioner shall not be seeking any adjournment in the suit and shall co-operate in expeditious disposal of the suit. He would further claim that the Petitioner can be put to a reasonable condition including payment of costs.

11. In the aforesaid backdrop, so as to give last opportunity to the Petitioner, it will be appropriate, in my opinion to set aside the order impugned dated 16th March, 2021 passed below Exhibit-56 thereby rejecting the prayer for setting aside order dated 2nd August, 2019 passed below Exhibit 52. As such, the Application, Exhibit 56 in Special Civil Suit No. 331 of 2013 stands allowed and the order dated 2nd August, 2019 passed below Exhibit 52 is set aside subject to the following conditions.

- (A) The Petitioner, within four weeks, shall deposit costs of Rs.1,00,000/- (Rupees One Lakh Only) before the trial Court, to which the Respondent Nos. 1 to 6 will be entitled to withdraw;

(B) Any adjournment on unreasonable ground by the Petitioner shall be subject to exemplary costs of not less than Rs.25,000/-;

(C) The hearing of the Special Civil Suit No. 331 of 2013 stands expedited;

(D) In any case, the Suit be decided within a period of one year from today.

12. The Writ Petition stands allowed in above terms.

(NITIN W. SAMBRE, J.)