

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7070 OF 2015

Shri Sandipan Dasharath Ghorpade Petitioner

vs

Smt. Mahitababi Nijam Mulani
Through Aarif Nijam -Mulani and Anr. Respondents

Mr. Rahul Shivaji Kadam, for the Petitioner.
Mr. Rupesh Atul Zade, for Respondent No.1.

CORAM : MADHAV J. JAMDAR, J.

DATE : 5th AUGUST, 2021

P.C. :

. Heard Mr. Rahul Kadam, learned Advocate for the petitioner and Mr. Rupesh Zade, learned Advocate appearing for respondent No.1.

2. By this petition, the petitioner has challenged the legality and validity of Order dated 21st April 2015 passed by the learned Joint Civil Judge, Senior Division, Baramati, Dist. Pune below Exh.50 in Special Civil Suit No.4 of 2014. By said order, the said application filed by the petitioner i.e. original defendant No.1 was rejected. By the said application, bearing Exh.50, defendant No.1 prayed that

delay of 330 days in filing the written statement be condoned and same be taken on record.

3. Mr. Rahul Kadam, the learned Advocate appearing for the petitioner submitted that the petitioner is a Government Servant and therefore, he has got very limited time for looking after personal affairs. He further submitted that for getting information and documents time was required and, therefore, there was delay of about 330 days in filing the written statement.

4. Mr. Rupesh Zade, learned Advocate appearing for respondent No.1 submitted that the delay is intentional and the application is filed at the instance of defendant No.2. He submitted that the application is filed for prolonging the hearing of the suit.

5. Perusal of the plaint shows that the suit has been filed by respondent No.1 against the petitioner (defendant No.1) and respondent No.2 (defendant No.2) for a declaration that transaction of Sale Deed dated 3rd July 2001 executed between the plaintiff and defendant No.1 is of mortgage and not of sale. It is significant to note that Sale Deed dated 13th September 2013 was executed by defendant No.1 in favour of defendant No.2. Therefore, further relief

of declaration that said Sale Deed dated 13th September 2013 be declared as illegal, null and void is also sought. The suit is filed on 17th January 2014. Defendant No.1 received the suit summons on 7th February 2014. The present application seeking condonation of delay in filing written statement was filed on 13th March 2015. In the application, it is stated that there is delay of 330 days in filing the written statement.

6. It is important to note that an application was filed by the plaintiff seeking direction to defendant No.1 to produce in the Court the original of Sale Deed dated 13th September 2013 executed by defendant No.1 in favour of defendant No.2 and surprisingly the same was produced by defendant No.1 in the Court on 5th December 2014. If the Sale Deed is executed by defendant No.1 in favour of defendant No.2 then ordinarily the original Sale-Deed should have been in the possession of defendant No.2. Thus, it is apparent that defendant Nos.1 and 2 are colluding with each other.

7. In the meanwhile, it appears that the evidence has started and plaintiff has closed her evidence and defendant No.2 has given certain admission in his cross-examination. Thereafter, the present application came to be filed on 13th March 2015. There is substance

in the observation of the learned trial Court that the present application is filed at the instance of defendant No.2 and to delay the hearing of the suit. The learned trial Court has given elaborate reasons for rejection of the application. The learned trial Court has observed that defendant No.1 has failed to point out sufficient reasons. It is further observed that defendant No.1 is not going to be affected by any order passed in the suit. The factual position on record clearly shows that the said application at Exh.50 was filed by the petitioner i.e. defendant No.1 at the instance of the defendant No.2 i.e. respondent No.2 and to delay the hearing of the suit. Therefore, there is no substance in the Writ Petition.

8. The Writ Petition is dismissed with costs. Interim order granted on 3rd September 2015 is vacated forthwith.

(MADHAV J. JAMDAR, J.)