

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.8790 OF 2017

VILAS PANDURANG NANDGAVE
VERSUS
GANPAT RAJARAM CHINCHOLE AND OTHERS

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Advocate for the Petitioner : Shri Suhas P. Urgunde
Advocate for Respondents 1 and 2 : Ms.Aum Maheshwari h/f Shri P.R.
Katneshwarkar
Advocate for Respondent 3 : Shri Pandurang M. Gaikwad

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CORAM: SMT. BHARATI H. DANGRE, J.

DATE :- 13th January, 2022

Per Court:

1. The petitioner is impleaded as defendant No.2 in Special Civil Suit No.71/2013 filed by the present respondent Nos.1 and 2/ plaintiffs claiming specific performance of an agreement and seeking relief against defendant No.1, who is the father of the petitioner, for execution of the registered sale deed in their favour pertaining to the property Gat No.17/4 situated at village Rachanawadi, Taluka Chakur, District Latur, after receiving the remaining consideration of Rs.24,01,000/- from the plaintiffs.

It is in this Special Civil Suit No.71/2013, that the impugned

order came to be passed on 30.03.2017 below Exhibit 55 permitting defendant No.1 (father of the petitioner) to withdraw the amount of Rs.15 lacs, out of Rs.20,01,000/-, on furnishing the bank guarantee of the nationalized bank.

2. In the said suit, when the compromise was effected between the plaintiffs and defendant No.1 and it being presented to the Court through an application filed by the plaintiffs on 09.06.2014, the learned Judge directed the registry to accept the amount of Rs.20,01,000/- in the wake of the prayer by the plaintiffs that the amount may be permitted to be deposited and the sale deed may be permitted to be executed.

3. The present petitioner, who is defendant No.2 in the said suit, did not contest the said application when the compromise was effected between the plaintiffs and defendant No.1. However, when defendant No.1 preferred an application Exhibit 55 for withdrawal of the said amount, the petitioner jumped in the fray and opposed the said application, by stating that the agreement to sale came to be executed during the pendency of the order in his favour granting injunction in RCS No.361/2009 filed by him.

4. At this stage, it would be necessary to sidetrack the proceedings in SCS No.71/2013 and turn to the proceedings in RCS No.361/2009.

RCS No.361/2009 was instituted by the petitioner in his

capacity as the plaintiff for partition and separate possession, in which, his father was impleaded as defendant No.5. On an application moved for injunction vide exhibit-5 in the said proceedings, on 14.12.2010, the learned Second Joint Civil Judge, Senior Division, Latur allowed the application and restrained defendant Nos.4 to 16 and 16-A from creating any third party interest in the suit property mentioned in the plaint and defendant No.5 particularly was restrained from withdrawing the compensation amount as regards the acquisition of some portion from the suit property, till the final decision of the suit.

Defendant No.5, who is the father of the plaintiff, preferred Misc. Civil Appeal No.3/2011 and the said appeal came to be partly allowed vide order dated 21.09.2012 passed by the learned District Judge-2, Latur and the order passed by the Trial Court came to be replaced and defendant Nos.4 to 16-A were restrained from alienating the plaintiff's undivided share in the suit property in any way by themselves or through any other person till the final disposal of the suit. Further, they were also restrained from withdrawing the amount of the plaintiff's undivided share from the compensation amount in respect of 97 R land out of Gat No.10/2 till the final disposal of the suit.

Being aggrieved, the plaintiff (present petitioner) filed the Writ Petition before this Court vide Writ Petition No.526/2013, which was dismissed and the Trial Court was directed to expeditiously terminate the

proceedings in RCS No.361/2009.

5. Subsequent events reveal that the suit filed by the petitioner/plaintiff being RCS No.361/2009 was dismissed in default on 27.01.2016. Till today, it is not restored to its file though it is informed that the application for restoration is taken out. In the interregnum when the suit of the plaintiff is dismissed, defendant No.5 in the absence of any injunction in operation, executed the sale deed in favour of the plaintiffs in SCS No.71/2013 on 26.08.2016.

6. These events having occurred during the pendency of SCS No.71/2013, defendant No.1 moved an application vide exhibit 55 on 12.09.2016 seeking withdrawal of the amount deposited in the Court by the plaintiffs towards the balance consideration for execution of the sale deed. This application is allowed under the impugned order passed on 30.03.2017, by permitting withdrawal of the amount of Rs.15 lac out of Rs.20,01,000/- deposited in the Court, subject to furnishing the bank guarantee in the Court of any nationalized bank. The present petitioner is aggrieved by this order.

7. It can be very well seen that the petitioner is responsible for the said situation as the suit filed by him in which, the injunction was operating against defendant No.5 itself came to be dismissed in default on 27.01.2016 and in absence of any restraint order, defendant No.5 executed the registered sale deed pursuant to the agreement to sale,

which he has executed during the operation of injunction i.e. on 31.01.2012 and SCS No.71/2013 was filed for specific performance of the said agreement. In absence of the injunction in operation, the sale deed was executed by defendant No.1 in favour of the plaintiffs in SCS No.71/2013 and with the permission of the Court, balance consideration was also deposited. On an application being moved for withdrawal of the said consideration, the learned Judge has permitted the withdrawal of the amount of Rs.15 lacs subject to furnishing the bank guarantee. It is worth to be noted that till date, the petitioner has not succeeded in getting his suit bearing RCS No.361/2009 restored. In the wake of the interconnection between the two proceedings, as could be discerned from the above chronology of events, RCS No.361/2009 filed by the petitioner/plaintiff being no longer alive for determination, the learned Judge has rightly secured the interest of the petitioner/defendant No.2 in SCS No.71/2013 by directing to furnish the bank guarantee to the extent of Rs.15 lacs.

8. In the wake of the above, factually as well as legally, since no infirmity is noticed in the impugned order, the same is upheld and the Writ Petition is dismissed.

9. Needless to state, the learned Joint Civil Judge, Senior Division, Latur shall culminate the proceedings in SCS No.71/2013 with utmost promptitude and in any case, within six months from today. All

respective parties shall render their cooperation to the learned Judge for early disposal of the said suit.

kps

(SMT. BHARATI H. DANGRE, J.)