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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9636 OF 2022

Angad Shankarrao Dure

PETITIONER

VERSUS

Rajshree Ramesh Jadhav

RESPONDENT

.....
Mr. Sharad V. Natu, Advocate for the petitioner
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 21st SEPTEMBER, 2022

ORDER :

1. The petitioner is aggrieved by the order dated 8th July, 2022 passed by the learned District Judge-4, Latur in MCA No. 44 of 2020, thereby setting aside the order passed by the Trial Court below Exhibit-5 and granting injunction in favour of the plaintiff, directing the defendant – petitioner, not to alienate and / or create third party interest in the suit property, till final disposal of the suit.

2. The suit is filed by the plaintiff for specific performance of contract and possession of the suit property. Along with the suit, application Exhibit-5 for temporary injunction was filed, which is rejected by the Trial Court holding that the plaintiff has

failed to bring on record any document to show that she was ready and willing to perform her part of the contract. Therefore, the plaintiff has failed to show *prima facie* case and no irreparable loss will be caused to her if injunction is not granted.

3. The appeal filed by the plaintiff is allowed by the Appellate Court and temporary injunction has been granted in favour of the plaintiff. Hence, this petition.

4. Heard learned advocate for the petitioner. Perused the grounds raised in the writ petition and the documents annexed thereto and the order passed by the Trial Court as well as the impugned order passed by the Appellate Court.

5. Perusal of the impugned order shows that the Appellate Court has taken into consideration the fact that there are multiple sale transactions dated 2nd December, 2013, which show that the defendant has entered into sale transaction with the plaintiff and other persons.

6. The Appellate Court has further held that the question as to whether time was essence of the contract or not and whether the plaintiff was and is ready and willing to perform her part of agreement of sale has to be decided, at the time of trial. The Appellate Court has, therefore, held that the plaintiff has made

out a *prima facie* case for specific performance of the agreement.

7. The Appellate Court has rightly exercised discretion in favour of the plaintiff. No case is made out by the petitioner to cause interference in the impugned order, in exercise of extraordinary writ jurisdiction. The writ petition, being devoid of merit, is dismissed. No costs.

[NITIN B. SURYAWANSHI]
JUDGE

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