

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

WRIT PETITION NO. 5778 OF 2019

Gangadhar s/o Bapuraoji Pathade
Vs.
Mohammad Aslam s/o Abdul Razzak

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. B.W. Patil, Advocate for petitioner.
Mr. S.S. Sitani, Advocate for respondent.

CORAM : MANISH PITALE J.

DATE : 20.07.2022.

By this writ petition, the petitioner i.e. original defendant has challenged order dated 23.07.2019 passed by the Court of 4th Joint Civil Judge Senior Division, Wardha, whereby an application at Exhibit 17 filed by the petitioner for pronouncement of judgment under Order 12 Rule 6 of the Code of Civil Procedure, was rejected.

2. The respondent has filed a suit for specific performance of contract in the context of an agreement dated 29.08.2013. It is the case of the respondent that decree of specific performance needs to be granted in the facts and circumstances of the case.

3. The petitioner filed written statement and denied the claims made by the respondent. But, the petitioner specifically stated that he was ready to execute sale-deed, if the respondent was to deposit the balance consideration within seven days from 05.06.2018. It was further claimed that otherwise the sale-deed could be executed if the respondent paid the balance consideration along with interest @ 10% p.a. from 28.02.2015.

4. In the backdrop of such pleadings, the petitioner filed the aforesaid application for pronouncement of judgment under Order 12 Rule 6 of the CPC. The said application was opposed by the respondent. By the impugned order, the Court below rejected the said application. The learned counsel for the petitioner submitted that in the light of the specific statement made in the written statement about the petitioner being ready to execute the sale-deed upon payment of balance consideration by the respondent, there was no impediment for the Court below to have exercised power under Order 12 Rule 6 of the CPC.

5. On the other hand, the learned counsel for the respondent invited attention of this Court to

the pleadings on record and demonstrated that there were indeed disputes that had arisen between the parties and only because the statement was made in the written statement that if balance consideration was paid within seven days of a specific date the sale-deed could be executed, a situation for exercise of power under Order 12 Rule 6 had not arisen.

6. This Court has carefully perused the contents of the plaint and the written statement. Although there is indeed statement made at the outset in the written statement that if the respondent pays balance consideration within seven days of the specific date, the petitioner was ready to execute the sale-deed, what is significant is that at the same time, the petitioner has also stated that if such payment was to be made beyond the stipulated period of time, the balance amount would have to be paid with interest at least 10% p.a. from 28.02.2015. Therefore, there is absence of unconditional acceptance of the claims made on behalf of the respondent in the plaint. Even otherwise, a perusal of the plaint and the written statement shows that there is a serious dispute between the parties as regards the exact area and the manner in which,

measurement was carried out, thereby indicating that there are indeed outstanding disputes between the parties and the situation contemplated under Order 12 Rule 6 of the CPC is not prevalent in the present case.

7. In view of the above, it cannot be said that the Court below committed an error while passing the impugned order.

8. Accordingly, the writ petition is dismissed.

JUDGE