

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 5062 OF 2021

PETITIONER :- Sadanand S/o Laxmanrao Wawre, aged
(Ori.Decree Holder) about 57 years, Occ : Service, R/o.
Gorakshan Ward, Ballarpur, Tah.
Ballarpur, District Chandrapur.

...VERSUS...

RESPONDENTS :- 1. Smt. Anusaya Abaji Jivtode, Age Major,
(Legal Heirs of Ori. Occ-Nil, R/o Ward No.2, Post Warur,
Judgment Debtors) Road, Tahsil Rajura, District Chandrapur.

2. Suresh S/o Abaji Jivtode, Age-Major,
Occ. Service, R/o. Police Qr. Tukum,
Chandrapur, District Chandrapur.

3. Ramesh S/o Abaji Jivtode, Age-Major,
Occ. Service, R/o. Srirampur, Tah.Rajura,
District Chandrapur.

4. Subash S/o Abaji Jivtode, Age-Major,
Occ. Service, R/o Ward No.2, Post Warur,
Road, Tahsil Rajura, District Chandrapur.

5. Sau.Surekha Eknath Borkute, Age Major,
Occ- Household, Ward No.2, Post Warur,
Road, Tahsil Rajura, District Chandrapur.

6. Sau.Sunita Gulab Dhanorkar, Aged about
Major, Occ. Household, R/o.
Mukkampost, Sindhi, Po. District
Chandrapur.

Mrs. Renuka Sirpurkar, counsel for the petitioner.
Mr. V.N.Morande, counsel for the respondents.

CORAM : MANISH PITALE, J.
DATE : 21.04.2022.

ORAL JUDGMENT

Heard.

2. **Rule.** Rule made returnable forthwith. The writ petition is heard finally with the consent of the learned counsel for the rival parties.

3. By this writ petition, the petitioner (original decree holder) has challenged order dated 22/10/2021, passed by the Court of Joint Civil Judge, Senior Division (hereinafter referred to as “Executing Court”), whereby an application at Exhibit-34 seeking a specific direction, has been rejected.

4. The facts in brief leading up to filing of the present writ petition are that the petitioner had filed a suit for specific

performance against the predecessor of the respondents. The said suit culminated in a compromise decree dated 24/09/2010. As per the compromise decree, it was agreed between the parties that the petitioner would obtain necessary permission for sale of the said land from the concerned Authorities. Upon obtaining such permission, the original vendor i.e. the predecessor of the respondents would execute the sale deed within 15 days on receiving the balance amount of consideration of Rs.2,40,000/-. The compromise decree stipulated that the aforesaid sale would be binding on the legal heirs of the original vendor and it was further stipulated that in case the original vendor delays execution of sale deed, the petitioner as the original plaintiff would be at liberty to have the sale deed executed by initiating execution proceedings.

5. The record shows that the necessary permission for sale of the land was obtained from the Competent Authority by the petitioner on 03/12/2011. Immediately on 09/12/2011, the petitioner issued notice through Advocate to the original vendor i.e. the predecessor of the respondents to remain present before the Registrar's office on 16/12/2011, for execution of the sale

deed on which day the balance consideration amount of Rs.2,40,000/- would be paid to him. The predecessor of the respondents remained absent before the Registrar on 16/12/2011. In these circumstances, the petitioner executed an affidavit stating that he was present before the Registrar with the balance amount of consideration and that the predecessor of the respondents remained absent.

6. In terms of the aforesaid compromise decree, since the predecessor of the respondents did not execute the sale deed, execution proceedings were initiated before the Executing Court bearing Special Darkhast No.103 of 2011.

7. The said execution proceedings have been pending since then, wherein even during the lifetime of the original vendor i.e. the predecessor of the respondents, the respondents had raised objection in the execution proceedings, claiming that the compromise decree was not binding on them. After the death of the original vendor, the respondents have continued to raise objections in the capacity of being the legal heirs of the original

judgment debtor.

8. During the pendency of the said execution proceedings, in the year 2021, land acquisition proceedings were initiated under the National Highways Act, for 0.49 Are out of the 4 Acres of property which was subject matter of the compromise decree.

9. In view of the said development in the year 2021, the petitioner filed the aforesaid application at Exhibit-34 seeking specific direction to the Executing Court. Although the prayer made in the said application leaves a lot to be desired, a perusal of the impugned order shows that it was specifically contended on behalf of the petitioner that by the said application, he was seeking a direction that the compensation amount in pursuance of such land acquisition proceedings ought to be deposited in the Executing Court, in the backdrop of the compromise decree and its execution being pursued by the petitioner. In fact, the Executing Court understood the relief sought in the said application as being a prayer for deposit of the compensation amount in the Executing

Court in view of pendency of the execution proceedings.

10. The said application at Exhibit-34 was opposed by the respondents. By the impugned order, the Executing Court rejected the application, *inter alia*, observing that the petitioner as a decree holder would get right over the suit property only upon deposit of the balance consideration amount and that it appeared that the petitioner as the decree holder was not ready and willing to perform his part of the contract as stated in the decree.

11. Mrs.Renuka Sirpurkar, learned counsel appearing for the petitioner, submitted that the Executing Court not only erred in rejecting the application at Exhibit-34, but the observations made in the impugned order are damaging to the cause of the petitioner while seeking execution of the aforesaid compromise decree. It was submitted that there was no occasion for the Executing Court to have made such observations. It was further submitted that the prayer made in the said application was clearly understood by the Executing Court as a direction to deposit the compensation amount in pursuance of the execution proceedings before the

Executing Court in the facts and circumstances of the present case. The said prayer ought to have been considered in the correct perspective and in the interest of justice such a direction ought to have been granted. According to the learned counsel appearing for the petitioner, considering the terms of the compromise decree, and the nature of objections raised on behalf of the respondents, the observations made regarding alleged lack of readiness and willingness on the part of the petitioners were wholly unwarranted, apart from the fact that they would damage the case of the petitioner in the pending execution proceedings. On this basis, it was submitted that the impugned order deserved to be set aside and the application deserved to be granted.

12. On the other hand, Mr.Morande, learned counsel appearing for the respondents, submitted that a proper appreciation of the relevant terms of the compromise decree would show that on failure of the predecessor of the respondents i.e. the original judgment debtor in executing the sale deed, the petitioner could have the sale deed executed by approaching the Executing Court, but it was obvious that the petitioner as the

decree holder was expected to deposit the balance consideration amount before the Executing Court. It was submitted that admittedly, the execution proceedings were initiated in the year 2011 and till date the petitioner as the decree holder had not deposited the balance amount. In these circumstances, the Executing Court was justified in making the aforesaid observations and in dismissing the application at Exhibit-34. The learned counsel for the respondents relied upon judgment of the Hon'ble Supreme Court in the case of **Chanda (Dead Through Lrs.) v. Rattni and anr.**, reported in **2007 (3) ALL MR 341 (S.C.)**, by emphasizing upon section 28 of the Specific Relief Act, 1963.

13. Heard the learned counsel for the rival parties and perused the material on record. Perusal of the compromise decree would show that there were certain obligations on both the parties as agreed between them. It is undisputed that the requisite permission was obtained by the petitioner from the concerned Authority for the aforesaid transaction on 03/12/2011, and that immediately on 09/12/2011, the petitioner caused a notice to be issued through Advocate to the predecessor of the respondents to

remain present before the office of the Registrar on 16/12/2011, for execution of the sale deed, on which day the balance amount of consideration of Rs.2,40,000/- was to be paid to the predecessor of the respondents. Since the predecessor of the respondents remained absent, in terms of the compromise decree, the petitioner was constrained to initiate the execution proceedings, which have remained pending for more than a decade. The material on record shows that objections were raised not only by the original judgment debtor i.e. the predecessor of the respondents, but the respondents themselves on one count or the other. Since the execution proceedings are pending, this Court refrains from making any comment upon such objections and the stand taken by the petitioner in that regard.

14. In the interregnum, the proceedings initiated under the provisions of the National Highways Act for acquisition of 0.49 Are from the suit property resulted in the petitioner moving the aforesaid application at Exhibit-34. As noted above, despite the nature of prayer made in the application, the Executing Court clearly understood the relief sought in the said application on

behalf of the petitioner as a direction that the compensation amount in pursuance of the said acquisition proceedings would have to be deposited in the Executing Court.

15. While considering the said application, which was opposed on behalf of the respondents, the Executing Court referred to the compromise decree and thereupon gave a specific finding that the petitioner as the decree holder appeared not to be ready and willing to perform his part of the contract as stated in the decree. There can be no two opinions about the fact that the aforesaid observation would be extremely damaging for the petitioner while pursuing the aforesaid execution proceedings. The said observation casually made by the Executing Court while dealing with the application at Exhibit-34 will have a lasting impact on the interpretation of the terms of the compromise decree and the objections raised on behalf of the respondents before the Executing Court.

16. This Court is of the opinion that there was no occasion for the Executing Court to have made such scathing observations

against the petitioner, which would prejudice his case going forward in the execution proceedings. Therefore, the said observations cannot be sustained at all.

17. In this light, the judgment upon which the learned counsel for the respondents has placed reliance needs to be considered.

18. Perusal of the same shows that in the said case, after a decree was passed in a suit for specific performance, the judgment debtor had moved a specific application under section 28 of the aforesaid Act for rescinding the contract on the basis of subsequent events. It was claimed therein that since the decree holder had failed to abide by the directions given by the Court while decreeing the suit for specific performance, a clear case for rescinding the contract under section 28 of the aforesaid Act was made out. During the course of considering such an application and its effect, the Hon'ble Supreme Court proceeded to analyze section 28 of the said Act and held in favour of the judgment debtor. The present case is clearly distinguishable, firstly, because there is no

application under section 28 of the said Act filed on behalf of the respondents and secondly, because there is no application or prayer made on behalf of the petitioner as the decree holder in the context of the compromise decree, other than claiming that due to failure on the part of original judgment debtor to remain present and executing the sale deed in terms of the compromise, the Executing Court ought to ensure that the sale deed is executed through the Court. In absence of any such application or prayer before the Executing Court, the invocation of section 28 of the said Act cannot be countenanced and therefore, the said judgment of the Hon'ble Supreme Court is wholly inapplicable in the facts and circumstances of the present case.

19. In this backdrop, it becomes necessary to consider whether the Executing Court ought to have granted the prayer made on behalf of the petitioner in the application at Exhibit-34. This Court finds that in the facts and circumstances of present case wherein part of the suit land is subject matter of the acquisition, it would be in the interest of justice that the compensation to be determined ought to be deposited before the Executing Court,

subject to the execution proceedings being finally disposed of. This Court is the opinion that the prayer made on behalf of the petitioner was reasonable and in furtherance of the interest of justice. Therefore, interference in the impugned order is necessary.

20. In the light of the above, the writ petition is allowed. The impugned order is quashed and set aside and the application at Exhibit-34 is allowed. Consequently, it is directed that the compensation pertaining to acquisition of 0.49 Are land out of the suit land, which shall be determined, shall be deposited before the Executing Court, pending further directions in the execution proceedings.

21. Rule is made absolute in the above terms. No costs.

JUDGE