

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

WRIT PETITION NO. 6766 OF 2019.

Motiram Vitthalrao Thombre,
Aged about 63 years, Occupation – Service,
resident of Laxmi Nagar, Amravati
Taluq and District Amravati. ... **PETITIONER.**

VERSUS

1.Alka Harihar Bhagadkar,
Aged about 48 years, Occupation – Household,
resident of Behind Gajanan Maharaj
Mandir, Sai Nagar, Amravati,
Taluq and District Amravati.

2.Sau.Rekha Ramlal Bhaladhare,
Aged about 58 years, Occupation Household,
resident of Gurudeo Nagar,
Amravati, Back of Shitla Mata
Mandir, Kathora Road, Amravati,
Taluq and District Amravati. ... **RESPONDENTS.**

Mr. Bhushan Dafle, Advocate for the Petitioner.
Mr.R.R. Vyas, Advocate for Respondent No.1.
Respondent No.2 Served.

CORAM : VINAY JOSHI, J.

DATE : NOVEMBER 21, 2022.

ORAL JUDGMENT :

Heard learned Counsel for the parties. Considering the issue involved in the Writ Petition and by consent of the learned Counsel appearing for the respective parties, the matter is taken up for final disposal by issuing Rule, making the same returnable forthwith.

2. The petitioner, a third party raises a challenge to the order dated 17.09.2018 passed in Special Darkhast No.30/2012, by which petitioners' application filed under Order XXI Rule 97 of the Code of Civil Procedure is decided.

3. A suit for specific performance bearing Special Civil Suit No.82/2004 was filed by respondent no.1/plaintiff, against respondent no.2/sole defendant. The said suit was filed on 07.04.2004, seeking specific performance of an agreement dated 15.11.2003. The trial Court has decreed the suit, thereby directing the defendant to execute sale deed on deposit of remaining consideration amount. The said decree for specific performance was

3

passed on 13.02.2009. Pursuant to said decree, respondent no.1/ plaintiff has filed execution proceeding bearing S.D.No.30/2012. It is the case of petitioner that the sole defendant – Rekha had already sold the suit property to one Shri Pathak vide registered sale deed dated 19.03.2004, who in turn sold the suit property to the petitioner / objector, vide registered Sale deed dated 13.05.2005. The petitioner came in possession of the suit property by virtue of the registered sale deed.

4. The petitioner was served with the notice in execution proceeding in terms of Order XXI Rule 22 of the Code. He filed an application in terms of Order XXI Rule 97 of the Code bearing R.M.J.C.No.146/2017 for protecting his possession by claiming independent right. Moreover, he has filed objection [Exh.37] in the execution proceeding with a limited request for not to issue warrant of possession till his objection under Order XXI Rule 97 of the Code is decided.

5. It is apparent, rather not disputed that the subject property was already sold to the objectors predecessor Pathak, even

Rgd.

4

prior to filing of the Special Civil Suit No.82/2004, therefore, the independent right claimed by the objector through his predecessor requires to be adjudicated. Other side has objected the petition by claiming bar of *lis pendens* in terms of Section 52 of the Transfer of Property Act along with Order XXI Rule 102 of the Code. It is the contention of the respondent that the sale transaction in favour of the petitioner is hit by the doctrine of *lis pendens*, therefore, he cannot seek stay to the possession decree. Moreover, it is contended that the possession decree was passed in the year 2009, and till date there is no execution.

6. The learned Counsel for the respondent has placed reliance on the decision of this Court in case of **Swastik Builders, Nagpur and another .vrs. Dr.Shobha Bhaskar Kaore and others – 2021 [4] Mh.L.J. 397**. However, the said decision would not assist his cause, since in that case the property was purchased after passing of the decree. The case here is more worst, as even before institution of suit, the property was sold to third party. Having regard to above facts, the trial Court ought to have stayed the proceeding till the

5

application under Order XXI Rule 97 of the Code is decided.

7. In view of above, Writ Petition is allowed and disposed of. The impugned order dated 17.09.2018 passed by the Joint Civil Judge, Senior Division, Amravati below Application Exh.37 in Special Darkhast No.30/2012 is quashed and set aside. Petitioners' application at Exh.37 filed in Special Darkhast is allowed, whereby the execution of possession warrant is stayed till the decision of application under Order XXI Rule 97 of the Code.

8. Rule is made absolute in aforesaid terms with no order as to cost.

JUDGE