

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

WRIT PETITION NO.6625 OF 2018

Ravishankar s/o Tulshiram Raut and others Vs.Mahadeo s/o Govindrao Gharpende

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions Court's or Judge's orders.
and Registrar's Orders.

Shri S.Z. Qazi, Advocate for petitioners.
Shri P.K. Mishra, Advocate for respondent.

CORAM : AMIT BORKAR, J.

DATE : SEPTEMBER 26, 2022.

The judgment debtor challenges the order dated 06.08.2018 passed by executing court rejecting the petitioners' application for the recession of contract under Section 28 of the Specific Relief Act.

2. The facts and circumstances giving rise to the present petition are as under:

(a) The respondent-judgment debtor has filed Special Civil Suit No.1611/2011 seeking specific performance of the contract. The said suit was decreed, directing the defendants to execute the sale deed. Clause 1(a) of the decree reads as under:

“1(a) The defendants shall jointly execute the registered sale deed of the suit property in favour of the plaintiff within a month from the date the plaintiff deposits the remaining balance consideration of ₹15,00,000/- in words also in the Court, within the period of one month from today.”

(b) Period of one month expired on 19.08.2017. However, undisputedly, the decree-holder did not deposit the amount within one month. The decree-holder therefore applied 03.10.2017 seeking the following prayer:

“It is therefore prayed that the Hon’ble court may pleased to grant the permission to deposit entire balance amount of consideration through two cheques having Cheque nos.048720 & 048721 of Dt.26-09-2017, in the sum of ₹8,00,000/- & ₹7,00,000/- respectively in the court.”

(c) The said application was allowed by the Court on 13.10.2017 by following orders.

“In view of decree, Nazir to accept the amount.”

(d) The judgment debtor thereafter filed an application on 08.02.2018 for dismissal of the execution proceeding. The said application was rejected. The petitioner filed another application for the recession of contract under Section 28 of the Specific Relief Act. By the impugned order, the Executing Court has rejected the said application. The petitioner has therefore filed the present petition.

3. The learned advocate for the petitioners submitted that the order of permission to accept the amount passed on 13.10.2017 permits the decree-holder to deposit the amount. The said order does not amount to the grant of extension of time of one month, and therefore the decree

could not be executed by Executing Court in the absence of specific order of extension. According to petitioners, no specific application was filed for an extension of time, and therefore the Executing Court had no power to pass an order of accepting the amount.

4. Having considered the submission, in my opinion, it is not in dispute that the Court has the power to extend the time to deposit the balance amount as stated in terms of the decree of specific performance. In consequence of such power, the Court can permit the decree-holder to deposit the amount under the decree after the period specified in the decree. The petitioners have not challenged the exercise of power dated 13.10.2017 before the Superior Court. With the result, the order dated 13.10.2017 has attained finality. The effect of such deposit would be deemed extension of the period as contemplated under clause 1(a) of the decree of specific performance.

5. Even if decree-holder did not file a specific application for an extension of time, it was within the power of the Court to permit the decree-holder to deposit the amount. At the time of exercise of such power, the Court is under obligation to adjudicate as to whether the decree-holder has made out a case for the extension of time or not. Mere non-mention of such reasons in the order does not render such an order void. If the order lacks such reasons as to why the Court extended the period, that would at the most be a

ground to challenge the order, but the order has attained finality, in my opinion, the Executing Court was justified in dismissing the application. There is no perversity in the impugned order. The petition is, therefore, dismissed. No order as to costs.

JUDGE

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