

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

WRIT PETITION NO. 8499 OF 2019

Smt.Panchfulla Udhav Khadatkhar vs. Anand Eknath Tambe

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

Court's or Judge's Orders.

Mr. J. R. Kidilay, Advocate for petitioner.
Mr. N. R. Bhishikar, Advocate for sole respondent.

CORAM : MANISH PITALE J.
DATE : 30/03/2022

By this writ petition, the petitioner has challenged order dated 05/10/2019, passed by the Court of 2nd Joint Civil Judge Senior Division, Wardha (Executing Court), whereby applications at Exh.17 and 20 filed by the petitioner were rejected. Application at Exh.17 was for dismissal of the execution proceedings initiated by the respondent and application at Exh.20 was for stay of the execution proceedings, till the time certain applications filed by the petitioner for setting aside of a compromise decree and for condonation of delay in moving such application for setting aside the compromise decree, are decided by the competent Court.

2. In the present case, the petitioner has filed a suit for declaration and injunction in respect of a property in possession of the petitioner. In the said suit, a counter claim is filed on behalf of the defendants, including the respondent herein, seeking possession of the suit property.

3. The said suit and counter claim came to be disposed of by order dated 28/04/2016, passed by the Court of Civil Judge Senior Division, Wardha, in terms of compromise arrived at between the parties. The Court recorded that the terms of compromise at Exh.54 were to be treated as part and parcel of the order disposing of the suit. As per the terms of the compromise, the petitioner along with co-plaintiff, accepted that they have no right, title or interest in the suit property and further agreed that the counter claim filed by the defendants be decreed.

4. The aforesaid compromise decree was put to execution by the respondent. It is the case of the petitioner that when her possession was threatened, that she made inquiry and she came to know about the details of the terms of compromise. According to her, she and the co-plaintiff had never instructed the counsel to agree for such terms of

compromise. According to the petitioner, the original plaintiffs were given to understand that the document that they signed, recorded that the original defendants were withdrawing their counter claim.

5. On this basis, the petitioner, along with the legal representatives of the original co-plaintiff, filed an application for setting aside the compromise decree along with an application for condonation of delay in moving the application for setting aside the compromise decree. The said applications were pending and, in that backdrop, the petitioner moved the applications at Exh.17 and 20, before the Executing Court for dismissal of the execution application or in the alternative for stay of the execution proceeding.

6. Mr. Kidilay, learned counsel appearing for the petitioner submitted that on instructions he is pressing the present writ petition only on the question of rejection of the application at Exh.20 for stay of the execution proceedings. According to the learned counsel, during the pendency of the application for setting aside the compromise decree and the application for condonation of delay in

moving such an application, the execution proceedings needs to be stayed, because if the petitioner stands dispossessed in pursuance of such execution proceedings, the applications filed before the Competent Court in respect of the compromise decree would be rendered infructuous.

7. On the other hand, Mr.Bhishikar, learned counsel for the respondent submitted that the application for setting aside compromise decree was admittedly moved after a long delay of 02 years and 08 months and that, in any case. there was no substance in the application for setting aside compromise decree. It was submitted that the Competent Court had passed the compromise decree in the presence of the parties after verifying the contents of the compromise petition and the fact that the parties had understood the same. This Court has considered the material on record.

8. The learned counsel appearing for the petitioner has fairly conceded that he is not pressing the present petition, insofar as rejection of the application for dismissal of the execution proceedings is concerned. The present petition is

being pressed only on the question of stay of execution proceedings.

9. The material on record shows that the suit filed by the petitioner and the co-plaintiff stood decreed in terms of compromise placed before the aforesaid Court. The terms of compromise have also been placed on record. It is the specific case of the petitioner that when her possession was threatened in the execution proceedings in pursuance of the said compromise decree that she became aware of the actual contents of the terms of compromise. According to her, she and the co-plaintiff had agreed for the compromise believing that in terms of the compromise the original defendants were withdrawing their counter claim. It is in these terms that the petitioner filed the application for setting aside the compromise decree along with the legal representatives of the co-plaintiff. The said application and the application for condonation of delay in moving such an application are admittedly pending before the Competent Court.

10. This Court is of the opinion that there is substance in the contentions raised on behalf of the petitioner that until the aforesaid applications

filed on behalf of the original plaintiffs in respect of the compromise decree are decided, it would be a travesty of justice that the execution proceedings are permitted to continue, because execution of such a decree may render the aforesaid applications infructuous. It would be in the interest of justice that appropriate directions are given for expeditious disposal of such applications and that the execution proceedings are stayed during such time.

11. In view of the above, the writ petition is partly allowed. The impugned order, insofar as it rejects Exh.20 i.e. application for stay of execution proceedings is set aside. It is directed that during the pendency of the application for setting aside compromise decree and the application for condonation of delay in moving such an application are decided by the Competent Court, the execution proceedings shall remain stayed.

12. It is further directed that the Court of Civil Judge Senior Division, Wardha shall immediately take up the application for condonation of delay in filing the application for setting aside compromise decree, filed on behalf of the petitioner and decide the same positively within a period of **six**

weeks from today. Depending upon the outcome of the said application, if at all the aforesaid Court is required to decide the application for setting aside the compromise decree, the said Court shall dispose of the application within three months of disposing of the application for condonation of delay.

13. As noted above, till such time that the aforesaid application/applications are disposed of, the execution proceedings shall remain stayed.

14. The writ petition stands disposed of.

15. Parties to appear before the Court of Civil Judge Senior Division Wardha on 5th April, 2022.

JUDGE