

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3430 OF 2014

Subhash Mattu Pathak

.... Petitioner

Versus

Madhukar Yashwant Kulkarni (deceased)

Through his L.Rs.

Sumati Madukar Kulkarni

and others

.... Respondents

.....

Mr. Shivaji T. Shelke, Advocate for the Petitioner

Mr. A.B. Kale, Advocate for the Respondent Nos. (a) and (b)

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 16th JUNE, 2023

ORDER :

1. By this petition, filed under Article 227 of the Constitution of India, the petitioner takes exception to the order passed by the learned Civil Judge, Senior Division, Kopergaon, District Ahmednagar, below Exhibit 123 in Regular Civil Suit No.270 of 2002.

2. Suit is filed by the petitioner/plaintiff for specific performance and injunction against the respondents/defendants. The suit came to be decreed on 18/07/2013. One of the stipulation in the decree is that, "*The plaintiff shall deposit in the Court balance consideration*

amount of Rs.41,600/- by 18/07/2013." Since the petitioner/plaintiff could not deposit the said amount within time, he moved application Exhibit-123 for extension of time on 21/11/2013. The said application was strenuously objected by the defendants, and the Trial Court has rejected it, holding that though the Court can extend the time stipulated by it to deposit the balance consideration, but the plaintiff ought to have submitted the application for extension of time before expiring of such time. The petitioner is aggrieved by this order.

3. Heard the learned advocate for the petitioner and the learned advocate for the respondents. Perused the writ petition memo, annexures thereto, impugned order and the citations relied upon by the learned advocate for the petitioner.

4. Learned advocate for the petitioner has rightly relied on decision in ***Gopal S/o. Sambhaji Samarth since deceased through Lrs. Geeta W/o. LT. Gopal Samarth and others Vs. Mukundrao Mahadeo Gedam, 2012 (2) Mh.L.J.602***, wherein the learned Single Judge of this Court held:

"Rule 12-A of Order XX of the Code of Civil Procedure empowers..... By necessary implication, the question of extension of time is left open to the discretion of the Court. In the

present case, the decree was passed by the Court of Civil Judge, Senior Division, Bhandara and the execution proceedings were also filed before the same Court, which has passed an order granting extension of time and rejected the objection to the executability of the decree. The contention that granting of extension amount to amendment of decree, is also rejected. The extension of time is for sufficient reasons. The direction fixing time to deposit amount being incidental in nature, the Executing Court was also competent to extend the time. It is a matter of extension of time to be granted upon satisfaction of the reasons put forth by the party concerned. In view of this, no fault can be found with the view taken by the trial Court in rejecting the objection raised by the applicants/defendants."

5. In the light of these observations, the approach of the Trial Court appears to be too technical and cannot be sustained. The plaintiff's suit is decreed on merits. He cannot be deprived of the fruits of decree on these technical grounds. The petitioner has also given plausible reasons for belatedly approaching the Trial Court seeking extension of time to the effect that his mother was ailing, and therefore, he was attending her in the Hospital. So also, he is solely dependent on the income from agriculture, and in interregnum period he could not get any aid from the agricultural land. After selling maize crop, he has arranged for the stipulated amount, which he offered to deposit by application Exhibit-123.

6. For the aforesaid reasons, the impugned order is unsustainable in law and facts of the case, and deserves to be quashed and set aside.

7. In the result, the writ petition is allowed.

8. The impugned order dated 21/11/2013 passed by the learned Civil Judge, Senior Division, Kopargaon, below Exhibit-123 in Regular Civil Suit No.270 of 2002 is quashed and set aside.

9. The application Exhibit-123 is allowed

10. The petitioner shall costs of Rs.5,000/- to the defendants in the Trial Court.

[NITIN B. SURYAWANSHI]
JUDGE

S.P Rane