

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10305 OF 2013

TUKARAM NIVRUTTI GAME
VERSUS
SAGAR PANDURANG GAVALI AND ANOTHER

...
Advocate for Petitioner : Mr. Chandrakant K. Shinde
Advocate for Respondent No.1 : Mr. Shailesh S. Chapalgaonkar
...

CORAM : NITIN B. SURYAWANSHI, J.
DATE : 22nd AUGUST, 2023

PER COURT :

1. Petitioner is aggrieved by the order passed by learned Civil Judge, Senior Division, Kopergaon, below Exhibit-104 in Regular Civil Suit No.132/2012, thereby rejecting application filed by the petitioner for extension of time to deposit the consideration amount.
2. Petitioner filed the suit for specific performance of agreement dated 27/12/2007. The suit came to be decreed on 12/08/2013, in following terms;

"

ORDER

The suit is partly decreed with costs.

The defendant No.1 do execute and register a sale deed in respect of the suit land at the plaintiff's expenses by 12-10-2013, failing which, the plaintiff shall be at liberty to get it executed through the Court.

The plaintiff shall pay to the defendant No.1 the difference between the market price of the suit land as on the date of filing of the present suit and the amount paid by him to the defendant No.2 on his behalf towards the earnest money by 12-9-2013.

Let the defendant No.1, his relatives, representatives, agents, attorneys and everybody

acting on his behalf be restrained from alienating the suit land to anybody else other than the plaintiff or creating any third party interest therein in any manner whatsoever.

Decree be drawn up accordingly."

3. The petitioner applied for certified copy on 14/08/2013 and it was delivered to him on 21/09/2013. Petitioner, thereafter obtained valuation certificate of the suit property from the Sub Registrar's Office at Kopargaon, on 26/09/2013. Petitioner then filed application Exhibit-104 on 03/10/2013, seeking extension of time for depositing the amount. By the impugned order, trial Court has rejected the said application. Hence, the present petition.

4. Heard learned advocate for petitioner and learned advocate for respondent No.1. Perused the writ petition memo, annexures thereto, the impugned order and citations relied upon by learned advocate for petitioner.

5. It is not in dispute that the petitioner applied for certified copy immediately on 14/08/2013 and it was delivered to him on 21/09/2013. As per the decree, petitioner was to get the valuation of suit property as on the date of filing of suit and has to pay the difference amount between the market price and the agreed consideration amount. The valuation certificate of the suit property is delivered to the petitioner on 26/09/2013, which shows market value of suit property in the year 2008 as Rs.2,37,000/-.

6. In the light of these facts, trial Court has erred in

rejecting the application filed by petitioner holding that, when the judgment and decree was pronounced in the Court on 12/08/2013, learned advocate for plaintiff/petitioner had noted the said order on the same day by putting his signature on the operative order and on that ground plea of petitioner that on 21/09/2013, he came to know about the order dated 12/08/2013 for the first time, was rejected. Reasons put forth by the petitioner for belatedly approaching trial Court, did not weigh with the trial Court. However, trial Court has failed to consider the fact that there was no such inordinate delay on the part of petitioner in approaching the Court. Trial Court has further erred in holding that there was lack of due diligence on the part of petitioner in not following directions given in the decree, and the delay and inaction on the part of petitioner to comply the order within stipulated time, disentitles him to the relief of extension of time fixed for payment of balance amount.

7. Trial Court has further failed to take into consideration settled legal position that in deserving cases, time of 30 days contemplated under Section 148 of the Code of Civil Procedure, can be exceeded beyond 30 days in exercise of powers under Section 151.

8. In *Vatsala Shankar Bansole Vs. Sambhaji Nanasaheb Khandarre and Another*, 2002 (6) Bom.C.R. 126, the learned Single Judge of this Court has held that, merely because there are

observations in decree that consequences of failure to deposit amount within a specific period, the decree would not partake of the nature of final decree or conditional decree and decree for specific performance has to be in nature of preliminary decree. Mere failure on the part of decree holder to deposit amount within stipulated period under the decree by itself would not amount to recession of contract which was subject matter of the suit. Even in such a case, it would be necessary for the defendant to move the Court for effective order under Section 28 of the Specific Relief Act, 1963.

9. Admittedly, in the case in hand, the respondents/defendants have failed to move application under Section 28 of the Specific Relief Act, seeking recession of the agreement dated 27/12/2007.

10. For the aforestated reasons, the impugned order cannot be sustained and the same is liable to be quashed and set aside. In the result, following order:-

ORDER

- (I) Writ petition is allowed.
- (II) Impugned order passed by learned Civil Judge, Senior Division, Kopargaon, below Exhibit-104 in Regular Civil Suit No.132/2012, is quashed and set aside. Application Exhibit-104 is allowed.

(NITIN B. SURYAWANSHI, J.)