

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 13508 OF 2023

**RAVINDRA DNYANOBA SARJE
VERSUS
VISHWAS VITTHALRAO JOSHI**

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Advocate for Petitioner : Mr. Kadu Shivraj B

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CORAM : SHAILESH P. BRAHME, J.

DATE : 30 OCTOBER 2023

PER COURT :

. Heard.

1. The petitioner is challenging the judgment and order dated 05.08.2023 passed by the learned District Judge, Ahmednagar in Miscellaneous Civil Appeal No.143/2022, confirming the order dated 19.09.2022 Below Exhibit-5 passed in Special Civil Suit No.104/2022.

2. The petitioner is the original defendant who is defending SCS No.104/2022 filed by the respondent for specific performance of the contract. Application at Exhibit-5 filed by the respondent, was allowed thereby restraining the petitioner from creating any third party interest pending suit. Against that, MCA No.143/2022 was carried by the petitioner and the same was dismissed on 05.08.2023.

3. The learned Advocate for the petitioner submits that the

agreement in question is bogus and forged. He submits that in the plaint the suit property has not been properly described. The lessee bank of the Maharashtra is occupying ground floor. The averments in the plaint in respect of the suit property in occupation with the lessee are misleading.

4. He submits that the alleged agreement was executed on 18.02.2019, whereas the suit has not been filed within period of three years. The cause of action is wrongly quoted causing prejudice to the petitioner. He further submits that the suit property has already been mortgaged with other financial institution and there is no question of any further alienation. Lastly it is submitted that the alternate prayers in the plaint of the plaintiff that is 14(C) would protect the interest of the respondent/plaintiff and there is no need to clamp any injunction.

5. Learned Counsel for the petitioner submits that both the Courts below have not rightly appreciated the submissions and arrived at erroneous conclusion.

6. I have gone through the plaint especially description of the suit property, the cause of action and the prayers. I have gone through the appeal memo of Misc.Civil Appeal No.143/2022. Most of the submissions of learned Counsel for the petitioner were not incorporated in the grounds of objection in Misc.Civil Appeal. There is a concurrent finding of the fact recorded by both the Courts below.

7. There is no dispute over payment of Rs.15 Lakhs by the plaintiff to defendant. However the nature of transaction is under consideration. Whether its a loan transaction or agreement to sell or the agreement without consent of the petitioner can be ascertained after full-fledged the trial. The finding recorded by the trial Court in paragraph no.11 are plausible and based on the material on record.

8. The finding recorded by the Lower Appellate Court in paragraph no.25 and 26 cannot be termed as erroneous exercise of jurisdiction. The submissions of the learned Counsel in respect of the delay has not been agitated before the Lower Appellate Court and therefore cannot be considered for the first time in the High Court. His submission regarding the description of the suit is not convincing. I do not find any perversity in the order passed by the trial Court. The petition has no merit and therefore it is dismissed.

[SHAILESH P. BRAHME, J.]

Najeed.