

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12380 OF 2021

Sahebrao Vinayak Patil

.... Petitioner

Versus

Santosh Shyamlal Jaiswal

.... Respondent

.....

Mr. Vikrant P. Raje, Advocate for the Petitioner

Mr. A.P. Bhandari, Advocate for the Respondent

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 09th JUNE, 2023

ORDER :

1. Order below Exhibit-18 in Regular Civil Suit No.135 of 2013 passed by the learned Civil Judge, Junior Division, Dhule is impugned in the present petition.

2. Suit for specific performance is filed by the respondent/plaintiff. By filing written statement, the petitioner/defendant opposed the same. Application Exhibit-18 is filed by the plaintiff claiming that since in the written statement, the defendant has admitted execution of the agreement to sale dated 09/04/2010, the burden is on him to prove the reasons behind executing the said document. Hence, the defendant be directed to lead the evidence before plaintiff by reserving the right of plaintiff to lead evidence. The said application is allowed. Hence, the present petition.

3. Heard the learned advocate for the petitioners and the learned advocate for the respondents. Perused the writ petition memo, annexures thereto and the impugned order

4. Learned advocate for the petitioner by relying on unreported decision of this Court in ***Zainabee W/o Mohammad Bashir and others Vs. Shivkumar and others*** (Writ Petition No.781 of 2003), submits that the Trial Court has no power to issue directions to defendant to step into the witness box first and lead evidence. He submits that the Trial Court has misread and misinterpreted the averments in the written statement, and has erred in passing the impugned order.

5. Learned advocate for the respondent, on the other hand, opposed the petition by supporting the impugned order. He further contends that the petition suffers from suppression of material facts and on that ground alone, the writ petition is liable to be dismissed. According to him, the petitioner after passing of the impugned order filed his affidavit in lieu of examination-in-chief on 14/03/2017, and without disclosing this fact, the present petition is filed after delay of two years on 09/10/2019. The delay is not explained by the petitioner.

6. There appears substance in the objection raised by the learned advocate for the respondent that, the delay is unexplained, so also the fact of filing of affidavit in lieu of examination-in-chief by the petitioner is not disclosed in the present petition. The petitioner is therefore not entitled for discretionary relief claimed in the present petition.

7. Apart from the above, in view of admission of execution of a registered agreement to sale dated 09/04/2010, the Trial Court appears to be justified in permitting the defendant to lead evidence first. There is no illegality or perversity in the order impugned in the present petition. In the rulings relied upon by the learned advocate for the petitioner, the facts were different than the facts in the present case, since the execution of the registered agreement to sale is admitted by the petitioner, the Trial Court has rightly held that the burden on the defendant to prove that the said execution is for some other purposes.

8. The Writ Petition being devoid of merit is dismissed.

[NITIN B. SURYAWANSHI]
JUDGE

S.P Rane