

Harish

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6579 OF 2022

Vijay Dharmaji Bhosale

...Petitioner

Versus

Javed Bashir Ichalkaranjkar

...Respondent

Mr. Bhooshan Mandlik for the Petitioner.

Mr. Sumit Sonare & Mr. Dnyanesh Patil i/b Mr. Aditya Raktade for
the Respondent.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : AUGUST 3, 2023

P. C. :

- 1.** Heard.
- 2.** The challenge in the Petition is to the order dated 24th October, 2019 rejecting the Petitioner's Application seeking permission to deposit the balance consideration of Rs. 4,00,000/- and the order dated 12th November, 2019 dismissing the application for review of the order dated 24th October, 2019.
- 3.** Heard Mr. Bhooshan Mandlik, learned counsel appearing for the Petitioner and Mr. Sumit Sonare learned counsel appearing for the Respondent.

4. Learned counsel appearing for the Petitioner-Original Plaintiff submits that the suit for specific performance being Special Suit No. 197 of 2017 was decreed on 5th August, 2019 and one month period was granted to pay the balance consideration. He would submit that during this period the city of Kolhapur was facing unprecedented floods and as such, the Petitioner could not arrange for the money and on 3rd September, 2019, application was made under section 28 of the Specific Relief Act, 1963 seeking extension of time for payment of balance consideration of Rs. 6,00,000/-. He would submit that on this Application, time of 10 days was granted which expired on 13th September, 2019. He would further contend that the flood situation in Kolhapur continued and on 30rd September, 2019 the Petitioner in person filed an Application seeking extension of time contending that on 4th September, 2019 a sum of Rs. 2,00,000/- was deposited and as there was floods and limited operations of the bank, the balance Rs. 4,00,000/- could not be deposited. He would point out that as on that date the Petitioner had brought a sum of Rs. 1,50,000/- and time was sought for the payment of balance consideration of Rs. 2,50,000/-. He would further contend that the Application was filed by the Court without any order and on 23rd October, 2019 an application was moved for permission to deposit of Rs. 4,00,000/- which came to be rejected by the impugned

order. He would contend that the genuine reasons were put forward for consideration of the Trial Court and in spite thereof, the Trial Court has dismissed the Application for permission to deposit Rs. 4,00,000/-

5. *Per contra*, learned counsel appearing for the Respondent submits that the first Application which was filed on 3rd September, 2019 was allowed by the Trial Court with a specific condition that upon failure to deposit amount of Rs. 2,00,000/- on 4th September, 2019 and the balance amount on or before 30th September, 2019, the Special Civil Suit No. 197 of 2017 shall be deemed to be dismissed.

6. Considered the submissions.

7. The suit being decreed is not disputed. The first Application was filed on 3rd September, 2019 which sought extension of the time and even at that time the city was facing unprecedented floods which had hampered the day to day affairs of the citizens. This fact is not disputed by the learned counsel appearing for the Respondent. On that application, extension of only 10 days was granted. Considering the position which the city was facing it would have been prudent to grant substantial time period, so that the Petitioner would have been able to make the payment of the balance amount after the situation improved. Be that as it may. On 30th September, 2019 the second Application was made. This Application

was filed by the Petitioner himself as the situation had not yet improved and it was not possible for any legal assistance to be availed of by the Petitioner.

8. The Application contends that the Petitioner had brought a sum of Rs. 1,50,000/- and sought permission to deposit the same which the Court asked him deposit the next date and as regards the balance amount of Rs. 2,00,000/-, further time was sought. This application was not decided by the Court and was filed for the reason that the same was not signed by the advocate. It is nobody's case that the Petitioner had not signed the Application and there is no requirement under any law which bars the litigant in person to sign the Application. As this application was filed without any order, on 23rd October, 2019, the application was filed seeking permission to deposit a sum of Rs. 4,00,000/- which came to be rejected. The Trial Court rejected the Application on the ground that there is no Application for condonation of delay for depositing the said amount and time was not extended for depositing the said amount. The Trial Court failed to take into consideration the natural calamity and as such, could have invoked the doctrine of force majeure to extend the period of limitation.

9. Further, the Trial Court also lost sight of the fact that the application was made on 30rd September, 2019 which was merely filed by

the Court without any order being passed on the said application and the Trial Court had directed the Petitioner to deposit a sum of Rs. 1,50,000/- which the Petitioner had brought on that day in the Court. As such, it can be safely construed that the Application was allowed as the Petitioner was permitted to deposit a further sum of Rs. 1,50,000/- on the next date.

10. Considering that on 23rd October, 2019 permission was sought for deposit of Rs. 4,00,000/-, which considering the situation prevalent at the time when the extension was sought, ought to have been allowed. The time frame in the present case also needs to be noted inasmuch as the Application was filed barely within one and half months from the date of the decree passed on 5th August, 2019. The delay could not have been said to be so gross and without any explanation so as to deny the extension of the time as sought for under the provisions of Section 28 of the Specific Relief Act, 1963.

11. In light of the above, the impugned orders are hereby quashed and set aside. As the impugned orders are quashed and set aside the application dated 23rd October, 2019 seeking permission to deposit of Rs. 4,00,000/- hereby allowed. Writ Petition stands allowed.

(SHARMILA U. DESHMUKH, J.)