

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.503 OF 2020

(SHARIF KHAN BISMILLA KHAN..VS.. SATYABHAMABAI MAROTI MESHARAM, THR. LR.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri C.A.Joshi, Advocate for Petitioner.
Shri P.S.Gawai, Advocate for Respondent.

CORAM : ANIL S. KILOR, J.
DATED : JULY 25, 2023.

1. Heard.

2. After the judgment and decree dated 09/07/2019 passed in a suit for specific performance filed by the petitioner/ plaintiff, decreeing the suit and directing the defendant to execute sale deed subject to deposit of balance consideration by the petitioner within one month, on 09/08/2019 i.e. on the next date when the time stipulated to deposit the amount was expired, an application for grant of time to pay balance consideration was moved by the petitioner and thereby time of two months was sought to deposit the amount. The said application was rejected by passing a cryptic order, which reads thus:

“ORDER

Judgment already delivered and she or her advocate can read the judgment to deposit the amount. Hence, application is rejected.”

3. Thereafter the petitioner on 13/08/2019 moved another application for permission to deposit the balance consideration, which also came to be dismissed vide order dated 13/08/2019 on the ground that the earlier application was rejected.

4. It is apparent from both the orders dated 09/08/2019 and 13/08/2019 that the trial Court has not recorded any reason for rejecting both the applications but in a cryptic manner the applications came to be decided/ rejected.

5. In the circumstances, I am of the opinion that the matter needs to be remanded back to the trial Court to decide the application dated 13/08/2019 afresh after hearing both the parties and after recording reasons. Accordingly, I pass the following order:

- i) The writ petition is partly allowed.
- ii) The impugned orders dated 09/08/2019 and 13/08/2019, passed by 2nd Joint Civil Judge Senior Division, Akola are hereby quashed and set aside.
- iii) The matter is remanded back to Civil Judge Senior Division, Akola for deciding application dated 13/08/2019 afresh. However, in view of subsequent application dated 13/08/2019, there is no need to decide the application dated 09/08/2019.

- iv) The Civil Judge Senior Division, Akola is directed to decide the application dated 13/08/2019 afresh after giving sufficient opportunity of hearing to both the parties.
- v) The amount of balance consideration, deposited by the petitioner in the trial Court in terms of the order dated 28/01/2020, shall be subject to result of the application dated 13/08/2019.

The Writ Petition is **disposed of** accordingly. No order as to costs.

JUDGE

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