

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

Writ Petition No.286 of 2020

Uddhav Balasaheb Pathare Vs Vinod Jugalkishor Chandak

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri A.M. Sudame, Advocate for the Petitioner

Shri S.S. Alaspurkar, Advocate for the respondent-sole.

CORAM : ANIL S. KILOR, J.

DATED : 19th April 2023

1. Heard.

2. In this petition, a challenge is raised to the order dated below Exh.10 dated 17.12.2019 passed by the 3rd Jt. Civil Judge Senior Division, Amravati, allowing the Special Darkhat No.27 of 2019, rejecting the application moved by the petitioner/Judgment Debtor for staying execution proceeding until the decision of the RMJC No.271 of 2019, filed under Order IX Rule 13 of the Code of Civil Procedure (CPC).

3. The respondent filed a suit for specific performance of contract against the petitioner which came to be decreed vide judgment and decree dated 05.10.2018. The said decree was passed *ex parte*. On receiving knowledge about the same, the petitioner filed an application dated 05.8.2019 under Order IX Rule 13 of the CPC for setting aside the *ex parte* decree.

4. The grounds raised in the application for setting aside the *ex parte* decree, in paragraph 2 and 3 of the application, read thus:

“2. That the applicant’s counsel then told the applicant that issues are to be framed by the Court and personal presence of parties is not required till the stage of evidence. Hence the applicant need not come to the Court unless and until the counsel calls him. The applicant had already given his mobile number to his counsel and because of the advice of the counsel, he did not come to the Court for attending the dates of the case and waited for the counsel’s further instructions.

3. Moreover, the elder son of the applicant named OM is at present 15 years old. But at the age of eight years he was diagnosed to be suffering from the grave disease of Muscular Dystrophy. In this kind of disease the muscle movements of the patient get weaker and weaker with growing age and the applicant’s son needs constant medical supervision and treatment. Now he is unable to walk on his legs nor can he move his hands. So constant care from parents is required and the applicant was also engrossed and involved in the treatment of his son. For this reason also he could not pay attention to the development of the further proceedings of Spl.C.S. No.132/2014.”

5. In the meantime, the petitioner moved an application in the execution proceeding filed by the respondent vide Special Darkhat No.27 of 2019, for staying the same until the decision on the application moved under Order IX Rule 13 of the CPC. The said application came to be rejected vide impugned order dated 17.12.2019, the same is the subject matter in this writ petition.

6. The learned counsel for the petitioner points out that the Advocate who was representing the petitioner, was arrested on

20.03.2018, in an offence registered under Section 302 of IPC and he was released on 06.10.2018. A day before he released on bail, the judgment and decree was passed on 05.10.2018. He therefore, submits that as the his lawyer was in jail, the matter remained unattended and therefore, the trial Court proceeded *ex parte*.

7. He therefore, submits that the application under Order IX Rule 13 of the CPC may be expedited and till then, the execution proceeding may be stayed.

8. He further points out that to show *bona fide*, the petitioner has deposited Rs.3,00,000/- in the trial Court.

9. On the other hand, the learned counsel for the respondent-sole submits that even if the case of the petitioner is considered, he has admitted that from 18.02.2015 till the decree was passed, he never contacted his counsel. He therefore, submits that for three years and seven months, the petitioner did not bother to know even the status of his case. It is submitted that now he is trying to shift the burden upon the Advocate.

10. It is submitted that in 2013, Rs.5,25,000.- was paid to the petitioner as earnest amount and after 7 years to show *bona fide* the petitioner has deposited Rs.3,00,000/-. It is submitted that, the same cannot be a ground for staying the execution proceeding. He accordingly, opposes the present writ petition and prays for dismissal of the same.

11. In the light of the rival contentions of the parties, I have perused the record and the impugned order.

12. The ground raised by the petitioner is that, his counsel assured him that whenever his presence is required, he will inform him and therefore, the petitioner did not contact his lawyer and waited more than three and half years for intimation from him. This submission has not been accepted by the learned Executing Court and rightly so because for every diligent litigant necessary information is available on the website of the Court. Even now without going to the Court, any litigant can know the status, next date etc of his/her case.

13. In the present matter, it appears that for more than three and half years the petitioner did not contact his lawyer and therefore, the reasons stated by the petitioner that from 20.03.2018 to 05.10.2018 his lawyer was in jail and because of the same the matter was proceeded *ex parte*, cannot be accepted.

14. In absence of any perversity pointed out in rejecting the application moved by the petitioner for staying the execution proceeding, I do not find any merit in the present writ petition, accordingly, it is **dismissed**.

[ANIL S. KILOR, J.]