



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CIVIL REVISION APPLICATION NO. 35 OF 2023

(Arun Ramkrushna Tople Vs. Madhav Bhimrao Rajurkar)

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

Court's or Judge's orders.

Shri A.M. Tirukh, Counsel for the applicant.
Shri Yash P. Bhelande, Counsel for the non-applicant.

.....

CORAM : ANIL L. PANSARE, J.
DECEMBER 12, 2023.

The challenge is to the order dated 24/2/2023 passed below Exh.16 by the learned 7th Joint Civil Judge Senior Division, Amravati in R.M.J.C. No. 1369/2022 with a further prayer to allow the application Exh.16.

2] Exh.16 is an application filed by the applicant/original defendant under Section 28 of the Specific Relief Act, 1963 (for short “the said Act”).

3] The facts leading to the filing of the said application are that the non-applicant/original plaintiff had filed a suit for specific performance of contract. The suit came to be registered as Special Civil Suit No. 105/2021. It appears that the parties entered into an agreement to sell the field bearing Survey No. 3/3, ad measuring 1.59 H.R., situated at Village – Tukapur, Taluka and District – Amravati for consideration amount of Rs.7,50,000/- per acre. This agreement was executed on 26/10/2020. The non-applicant had paid an amount of Rs.1,00,000/- as an earnest money. The parties had decided to execute sale-deed by 22/2/2021. The

applicant is said to have not executed the sale-deed and, therefore, the non-applicant filed suit for specific performance of contract. The said suit was decreed on 11/10/2021 in the following terms :

“(1) The suit is decreed.

(2) The defendant is hereby directed to execute the sale deed of the suit property described in the plaint para no.1 within one month from the date of judgment.

(3) The plaintiff is hereby directed the remaining consideration amount of Rs.29,00,000/- as agreed between plaintiff and defendant be deposited into the court within 25 days from the date of judgment. In default both the parties are at liberty to take recourse of the law.

(4) Decree be drawn up accordingly.”

4] The applicant by filing application (Exh.16) has pointed out to the Court below that the non-applicant has not deposited the amount of Rs.29,00,000/- within 25 days from the date of judgment. The applicant, therefore, sought rescission of contract. In doing so, the applicant, in the concluding paragraph, has pleaded that the earnest money of Rs.1,00,000/- paid by the non-applicant be adjusted and awarded to the applicant towards damages.

5] The trial Court appears to have harped upon the concluding line of the application and criticized the applicant for not coming before the Court with clean hands. The trial Court was of the view that the applicant ought to have repaid the amount of Rs.1,00,000/- to the non-applicant. Instead, he sought to adjust the said

amount as damages. This request, according to the trial Court, is not justified. The trial Court was of the view that the applicant intends to grab the said amount without any excuse. This conduct is noted as 'not *bona fide*'.

6] The trial Court has then noted that the applicant was directed to execute the sale-deed within one month. He has not placed on record any cogent material to show that he remained present before the Competent Authority to execute and register the sale-deed. This conduct of the applicant is taken note of by the trial Court to conclude that the applicant has not approached the Court with clean hands.

7] The learned Counsel for the applicant has rightly argued that the non-applicant was directed to deposit Rs.29,00,000/- before the trial Court within 25 days from the date of judgment, which admittedly the non-applicant has not deposited. The operative Clause (3) of the decree indicates that if the non-applicant commits default, both the parties were at liberty to take recourse of law, meaning thereby the non-applicant could have sought extension of time and the applicant could have either sought appropriate orders from the Court below seeking further direction to the non-applicant to comply the order or could have filed an application of the present nature. The applicant chose to file the present application, which cannot be said to be contrary to the operative order or to the provisions of the said Act.

8] The learned Counsel for the applicant is further correct in contending that the expectation of the trial Court that the applicant ought to have remained

present before the Sub-Registrar's office is contrary to its own direction given to the non-applicant in operative Clause (3) of the decree. Unless the non-applicant has deposited Rs.29,00,000/- in the trial Court, it will be unjustified to expect the applicant to remain present before the Sub-Registrar's office to execute the sale-deed.

9] The trial Court, instead of noting the conduct of the non-applicant, has blamed the applicant of not complying the order, which part of the order was dependent upon the non-applicant performing his obligation.

10] It appears that the non-applicant, though appeared through Advocate, has not filed reply to the application (Exh.16). Despite such status, the trial Court has unnecessarily blamed the applicant and made unwarranted comments upon his conduct. The fact remains that the non-applicant has not deposited the amount as directed. In the circumstances, there arises no question of the applicant executing the sale-deed.

11] So far as the request of the applicant to adjust the amount of Rs.1,00,000/- as damages, as such, the said request cannot be said to be unjustified. The applicant who has received a meager amount of Rs.1,00,000/- out of the total consideration amount which would be Rs.30,00,000/- in a way could have sought damages for non-payment of huge amount at the hands of the non-applicant, considering the time span spent in between. Nonetheless, if the trial Court was of the view that the applicant has not paid the Court fee for such relief, the trial Court either could have rejected the

prayer to that effect or could have directed the applicant to pay the Court fee and make good his application. Instead, the trial Court took a view that the applicant intends to grab the amount, which is sans logical reasoning.

12] Be that as it may, coming back to the facts of the present case, admittedly the non-applicant has not deposited the amount of Rs.29,00,000/- as directed by the Court. The non-applicant did not show his willingness before the trial Court to deposit the said amount forthwith. I am informed that the learned Counsel, who appeared for the non-applicant, has except for filing Vakalatnama played no role. He did not appear before the trial Court and, therefore, the application proceeded ex parte.

13] Thus, what remains is the case put forth by the applicant which clearly indicates that the non-applicant is to be blamed for not complying the order passed by the Court below. If the non-applicant has no respect for the order passed by the Court, to my mind, there was no reason for the trial Court to not allow the application. The discretion ought to be exercised, under such circumstances, in favour of the person who respects the order of the Court and not the person who does not. The trial Court, therefore, failed to consider the scope and purpose of Section 28 of the said Act and arrived at a perverse finding.

14] At this stage, the learned Counsel for the non-applicant submits that the applicant may be directed to pay back the amount of Rs.1,00,000/- to the non-

applicant which was paid by the non-applicant as earnest money. This request is something which could be acceded to. Hence, the following order :

ORDER

- i] The revision is partly allowed.
- ii] The order dated 24/2/2023 passed by the learned 7th Joint Civil Judge Senior Division, Amravati in R.M.J.C. No. 1369/2022 is quashed and set aside.
- iii] The application (Exh.16) is allowed to the extent of the prayer seeking rescission of contract.
- iv] The applicant shall within 15 working days from today shall deposit an amount of Rs.1,00,000/- before the trial Court, which amount shall be payable to the non-applicant upon making an application before the trial Court.
- v] If the amount of Rs.1,00,000/- is not deposited as directed, the order passed by this Court shall stand recalled and the revision shall stand dismissed for non-compliance of the order.
- vi] Parties to bear their own costs.

(ANIL L. PANSARE, J.)

Sumit