



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

CIVIL REVISION APPLICATION NO.57/2022

Dr. Rahul Anandkumar Rathi and Ors. Vs. Atul Sahebrao Deshmukh.

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

Court's or Judge's orders

Mr. S. A. Mohta, Advocate for applicants.
Mr. S. S. Shingane, Advocate for non applicant.

CORAM : ANIL L. PANSARE, J.

DATE : 12.09.2023

Heard.

The challenge is to the order dated 14.03.2022 passed by Civil Judge Senior Division, Mangrulpir in Special Civil Suit No.7/2021, whereby the learned trial Court has rejected the application filed by the applicants herein under Order XII Rule 6 read with Section 151 of the Civil Procedure Code, 1908 (For short the, "CPC").

Having heard both the sides, it transpires that the applicants had filed a suit for specific performance of contract and for permanent injunction, mainly on the ground that the non applicant/defendant are from creating third party interest in the suit property.

The parties entered into the agreement to sell the suit plots on 05.10.2020. The parties agreed to execute the sale deed on or before 30.04.2021. The terms of the contract indicate that the non applicant has offered that he would measure the above plots at his own costs prior to the execution of the sale deed.

The case of the applicant is that on 01.03.2021, they came to know from one Shrikrushna Ratnaparkhi that the non applicant is bent upon to sell the suit plot to some third party on 01.03.2021. The applicants approached to the non applicant to execute the sale deed, which the non applicant denied.

Counsel for the non applicant submits that the suit for specific performance is premature inasmuch as the sale deed was to be executed in April-2021. The case of the applicants that the non applicant was bent upon to create third party interest, has been categorically denied in the written statement though the other part of the plaint has been admitted.

The contention of the counsel for the applicants is that the trial court ought to have granted relief of specific performance of contract in terms of Order XII Rule 5 of the CPC. The non applicant has categorically admitted that part of the plaint.

However, it is clear from the averments made in the plaint that the basis of filing the suit is the information received by the applicants that the non applicant is trying to create third party interest. This part of the averment has been categorically denied by the non applicant. So far as measurement of the plot is concerned, it is not the case of the applicants that the non applicant has already measured the plot and, therefore, discharged his obligation prior to execution of the sale deed.

In the circumstances, it cannot be said that the Court below has committed perversity in rejecting the application. There is no merit in the revision application. The same is, therefore, dismissed. No order as to costs.

(Anil L. Pansare, J.)

Kahale