

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

WRIT PETITION NO. 3827 OF 2022

1. Sunanda Uttam Dethe,
Aged : 54 years, Occupation: Household
2. Shamla Shankar Ghanode,
Aged : 35 Years, Occupation : Household
3. Ganesh Uttam Dethe,
Aged: 33 Years, Occupation: Agriculturist
4. Rina Pravin Kurekar
Aged: 31 Years, Occupation : Household
5. Tanuja Uttam Dethe alias Tanuja Devidas
Wandhare, Aged : 28 Years, Occupation:
Household
6. Chanda Uttam Dethe alias Chanda Sandip
Pote, Aged 26 Years, Occupation:
Household

Petitioner Nos. 1 to 6 are all residing at
Chikalgaon, Post and Taluka : Wani, Dist.
Yavatmal

...Petitioners

// VERSUS //

1. Vishweshwar Yaswantrao Zade,
Aged : 52 Years, Occupation :
Agriculturist / Builders and Developers
residing at near Kathed Oil Mill, Jatra
Road, Wani, Taluka: Wani, Dist. Yavatmal
2. Lilabai Ramchandra Chawale,
Aged 63 Years, Occupation: Household,
residing at Majari Wasti, Post: Shivaji
Nagar, Taluka: Bhandravati, District
Chandrapur

... Respondents

Shri Rahul Dhande, Advocate for the petitioners.

Shri Omkar Deshpande, Advocate for the respondent nos. 1 and 2.

CORAM : ANIL S. KILOR, J.

DATED : 5th APRIL, 2023.

ORAL JUDGMENT :

Heard. Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

2. In this writ petition, the challenge is raised to the order dated 16th March, 2022, passed by the District Judge-1, Kelapur in Regular Civil Appeal No. 27 of 2021, is under challenge to the extent of clause (5) and (7) of the impugned order.

3. In the present matter, the plaintiff no.1 i.e. respondent no.1 has filed a suit for specific performance of contract and possession of the suit land, which was decreed vide judgment and decree dated 17th March, 2020, passed in Special Civil Case No.27 of 2010 and thereby the defendant no.1(i) to 1(vi) were directed to get measured the suit land through the Government Machinery and to execute sale-deed in favour of the plaintiff in respect of the suit land within two months.

4. The said judgment and decree was carried in Regular Civil Appeal No. 27 of 2021 along with application for stay to execution of decree, at the instance of the petitioner.

5. Learned Appellate Court granted stay to the judgment and decree dated 17th March, 2020, passed by the trial Court. However, it was

subject to certain conditions. The conditions to which the petitioner has raised objection in the present writ petition are as follows:

“5) The appellants shall also furnish security of Rs.45,00,000/- for the due performance of the decree or order, as may ultimately be binding upon him.

7) In case of breach of any of the conditions, the stay granted shall stand automatically vacated.”

6. It is submitted that without any purpose and any reason the condition no.5 was imposed. It is further pointed out that as far as condition of deposits of Rs.1,10,000/- by way of clause (4) is concerned, the said condition was fulfilled. It is submitted that if the petitioner fails in the appeal, the decree will be executed by executing the sale-deed, but in any case such conditions i.e. condition nos. 5 and 7 are unwarranted.

7. On the other hand, Shri Deshpande learned counsel for the respondent no.1 supports the clause nos. 5 and 7 of the impugned order. He prays for dismissal of the present writ petition.

8. In the light of rival submissions of the parties, I have perused the record and the impugned order.

9. Admittedly, the suit is for specific performance and it was decreed by the trial Court. The impugned order was passed in the appeal filed by the petitioner against the said judgment and decree. If the

petitioner fails in the appeal, he will have to comply the judgment and decree of the Appellate Court by executing a sale-deed.

10. Undisputedly, in this matter decree is not a money decree wherein, the Court may impose a condition to deposit the decretal amount or part of the decretal amount while granting stay.

11. In a suit for specific performance either vendor has to execute a sale-deed or refund back the amount but in any case asking the petitioner to deposit of Rs.45,00,000/-, would amount to refusal of grant of stay.

12. Thus, I am of the opinion that such directions issued by the lower Appellate Court to deposit Rs.45,00,000/- is without any purpose. Hence, I pass the following order.

- i. The writ petition is allowed;
- ii Clause Nos. 5 and 7 of the impugned order dated 16th March, 2022 passed by the District Judge-1, Kelapur in Regular Civil Appeal No. 27 of 2021 are hereby quashed and set aside;
- iii. The lower Appellate Court is directed to decide the appeal, in any case, within six months from today.

[ANIL S. KILOR, J.]

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