



**IN THE JUDICATURE OF HIGH COURT AT BOMBAY
BENCH AT AURANGABAD**

928 WRIT PETITION NO. 3025 OF 2023

Hamid Khan Mehmood Khan Pathan Alias Tadvī And Another

VERSUS

Hemlata Sadashiv Sarpate Through Gpa Holder Santoshkumar Bhimrao
Salwe

...

Advocate for the Petitioner : Mr. Kulkarni Suresh Madhusudan

Advocate for Respondent : Mr. A. R. Ingle

...

CORAM : R. M. JOSHI, J.

Dated : July 10, 2024

PER COURT :-

1. Heard by consent finally at admission stage.
2. This petition takes exception to the order passed by learned District Judge-3, Nanded in MCA No.90/2022 whereby order dated 04/08/2022 passed by Civil Judge Senior Division, Nanded below Exhibit 5 in Special Civil Suit No.127/2021 is set aside and injunction order is passed against the defendant restraining them from alienating or creating third party interest in any manner in the suit property.
3. The facts as they appear on the record indicates that there was a agreement of sale of suit property between plaintiff and defendant dated 03/11/2016. At the execution of agreement of sale earnest money of Rs.2,00,000/- was received and balance consideration was to be paid on or before 30th day. On the face of it, it does not appear that vendor was required to comply with any conditions or was under obligation to

perform any act but for executing sale deed in receipt of balance consideration. Thus, it was the responsibility of the purchaser to pay the agreed balance amount of consideration and to get sale deed executed. Admittedly, both sides did not do anything for a period of 4 ½ years thereafter. Thereafter, it was defendant who had issued notice dated 25/06/2021 informing cancellation of the said agreement and forfeiture of the earnest money. Plaintiff replied the said notice claiming that she was ready and willing to pay balance consideration to get sale deed executed. Plaintiff thereafter also issued public notice in this regard. In the year 2021 Special Civil Suit No.127/2021 came to be filed for specific performance of contract. Application Exhibit 5 was filed, which came to be rejected by the Trial Court by order dated 04/08/2022. This order was challenged in MCA No.90/2022 before District Court, Nanded successfully. Hence, this petition.

4. Prima facie perusal of the record indicates that there was no obligation on the vendor to comply any terms of the agreement or was required to do anything else before executing the sale deed. Thus, the period of 30 days as agreed between the parties was the deadline for payment of balance consideration for getting sale deed executed.

Plaintiff for 4 ½ years has not done anything nor prima facie there is any material on record to indicate that the defendant was ever approached for receipt of consideration and he has refused to accept the same.

5. This is a suit for specific performance of contract. In view of Section 19 (b) of Specific Relief Act, 1963, a decree of specific performance the subsequent purchaser can be directed to join in conveyance so as to pass title which resides in subsequent purchaser. No doubt it is open for the purchaser to claim such transaction without notice of limitation, bonafide and the consideration. Thus, if ultimately suit is decreed, in that case such decree passed by the competent Court would be binding on the subsequent transferee. In such circumstances, the District Judge was not justified in restraining the defendants from alienating the suit property. More particularly, in view of the fact that the suit in question has been filed after more than 4 ½ years of the cause of action for the plaintiff to file the suit. Such injunction cannot be granted with observation such as for avoiding multiplicity of the proceedings etc. While granting such injunction, the learned District Judge has not taken into consideration the position of law with regard to the suit for specific performance and binding nature of decree on the

subsequent purchasers. Having regard to the peculiarity of facts involved in this case there is absolutely no reason or justification to uphold the order impugned. In the facts and circumstances of the case, impugned order deserves to be set aside, and accordingly it is set aside. The order passed by the Trial Court passed below Exhibit 5 of rejecting application for injunction stands restored.

6. Petition stands allowed in above terms.

(R. M. JOSHI, J.)

vj gawade/-.