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

901 WRIT PETITION NO.1337 OF 2023

1] JYOTI HIRAMAN DHANGAR
2] HIRAMAN RAMKRISHNA DHANGAR
VERSUS
HARINARAYAN JAGNNATH SAINI
...
Advocate for the petitioner : Mr.H.P.Randhir
Advocate for Respondent : Mr.A.N.Nagargoje
...

CORAM : ARUN R. PEDNEKER, J.
DATE : 24.01.2024

P.C. :

1] By way of present Writ Petition, the petitioner is challenging the impugned order dated 19.07.2022 below Exh. 5 in Regular Civil Appeal No.87 of 2022 passed by the District Court, Jalgaon.

Brief facts leading to filing the present Writ Petition are as under:

2] The respondent – plaintiff was the owner of house property, situated at village Manyarkheda, Taluka and District Jalgaon in Gat No.318, Plot No.19 in block No.3, admeasuring 43.35 square meters with constructed house admeasuring 39.23 square meters. As per sale deed No.885/2020 dated 13.03.2020, the plaintiff had sold out suit property to defendants for Rs.11,00,000/-. The plaintiff had received Rs.1,00,000/- through cheque No.352121 and Rs.2,18,447/- through cheque No.352133 from defendants. The petitioners – defendants had applied to Muthoot Homefin (India) Limited for getting a housing loan. They assured that they would pay remaining amount of Rs.7,82,153/- through cheque No.93111 dated 31.01.2020 issued by Muthoot Homefin (India) Ltd. and produced the photo copy of the same. The plaintiff has executed the sale deed in favour of defendants.

3] After execution of sale deed, the plaintiff has demanded original cheque No.93111 from the defendants and Muthoot Homefin (India) Ltd. The defendants and concerned Bank had neither paid that outstanding amount of Rs.7,82,153/-, nor issued cheque for the same amount in favour of the plaintiff. It is further the case of the plaintiff that lastly, the plaintiff came to know from the Muthoot Homefin (India) Ltd. that the defendants have cancelled the housing loan. The respondent – plaintiff had filed a suit for cancellation of sale deed and also prayed for recovery of outstanding sale price of Rs.7,82,153/- with interest @ 18% per annum.

4] The defendants, thereafter, filed written statement in the said suit. It is submitted in the written statement that the defendants had never issued any cheque in favour of the plaintiff. The defendants paid the sale price of suit property to the plaintiff in cash. After receipt of the entire sale price, the plaintiff had executed the sale deed and delivered the possession of the suit property to them.

5] After considering all evidence on record, the trial Court has directed the defendant nos.1 and 2 i.e. petitioners to pay Rs.7,82,153/- along with interest @ 12% p.a. to the plaintiff from registration of sale deed No.785/2020 i.e. 13.03.2020 till its realization along with its interest. Thereafter, against the said order, the defendants filed Regular Civil Appeal No.87/2022 before the District Judge, Jalgaon. In the said Appeal, the defendants have also filed an application for interim stay. The said application was rejected by the District Judge, Jalgaon on 19.07.2022 against which the present writ petition is filed.

6] The learned counsel for the petitioners submits that the petitioners had never issued any cheque in favour of the respondent - plaintiff. The defendants paid the sale price of suit property to the plaintiff in-cash. After receipt of the entire sale price, the plaintiff had executed the sale deed and delivered the possession of the suit property to the defendants – petitioners. Considering the said fact, the present Writ Petition may be allowed.

7] The trial Court at para no.42 has observed as under :

> *42) It is pertinent to note that, sale deed has referred to cheque No.93111 for consideration of Rs.7,82,153/-. It has been also proved that, defendants had applied to Muthoot Homefin (India) Ltd for obtaining the housing loan. As per the housing loan contract amongst defendants No. 1 & 2 and Muthoot Homefin (India) Ltd had sanctioned the housing loan in favour of defendants. Accordingly, the Muthoot Homefin (India) Ltd had prepared cheque No.93,111 dated 31-01-2020 in the name of the plaintiff. It has also proved that, original cheque was not issued in favour of the plaintiff due to cancellation of the housing loan proposal. As per the recitals of the sale deed, intention of the parties reflected there from it appears that, the plaintiff has got executed the sale deed in favour of defendants pretending that he had received the cheque. The housing loan was sanctioned to defendants @ 13.50% per annum with fluctuating rate of interest.*

I do not see any prima facie error in the observations of the trial Court as no evidence of payment of Rs.7,82,153/- is forthcoming.

8] There is no evidence available with the petitioners in respect of payment of Rs.7,82,153/- to the plaintiff. The petitioners have also not come with some offer to pay or deposit the outstanding amount. This Court would thus not exercise it's writ jurisdiction as the orders passed by the Courts below are just and proper.

9] The impugned orders are passed by the trial Court as well as the District Court after considering all the evidence on record. In view of the same, the present Writ Petition is dismissed.

[ARUN R. PEDNEKER]
JUDGE

DDC