

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12775 OF 2024

Prashant Vasant Indapure & Anr.

.. Petitioners

Versus

Bapu Tatya Mane & Ors.

.. Respondents

.....

- Mr. Dhananjayrao D. Rananaware for Petitioners

.....

CORAM : MILIND N. JADHAV, J.

DATE : SEPTEMBER 25, 2024

P. C.:

- 1.** Heard Mr. Rananaware, learned Advocate for Petitioners.
- 2.** Grievance expressed by Petitioners is that they are unsuccessful Defendants before the Trial Court. They have filed statutory Regular Civil Appeal (for short '**RCA**') but since there is a delay of 3 years and 11 months, said Appeal has not been registered as yet. They have filed delay condonation Application before the District Court which is pending. Suit was filed for specific performance by Plaintiffs in 2010. It was decreed by the Trial Court on 18.11.2019. Regular Civil Appeal against the said Judgment is filed in November 2023. Though there is a delay, exemption of period for filing the Appeal during COVID-19 Pandemic period between 15.03.2020 and 28.03.2023 will be available to the Appellants. However, Mr. Rananaware would submit that in the meanwhile Plaintiffs sought execution of the decree and in Darkhast proceedings filed by Plaintiffs,

impugned order dated 18.03.2024 has been passed. Interlocutory Application below Exhibit-46 seeking issuance of arrest warrant against Judgement Debtors to detain all of them in civil prison has been allowed by the Executing Court. Impugned order on the face of record, *prima facie*, is a harsh order. Once the substantive RCA is filed and pending, the Executing Court ought to have shown some restraint and put the Judgement Debtors to appropriate terms to balance the convenience between the parties and avoid irreparable harm to either party.

3. However I am of the view that if an appropriate direction to deposit substantial amount as per the decree passed as security is directed to be made in Court by the Judgement Debtors i.e. Appellants in RCA and considering the filing of the RCA before the Appellate Court, it will meet the ends of justice and will enure to the benefit of all parties including the Decree Holders - Plaintiffs. It is seen that the decree is a money decree of Rs.25,00,000/- with 8% interest as directed therein. Hence considering that substantive Appeal was filed and pending, although with some delay, an opportunity needs to be given to the Judgement Debtors to prosecute the Appeal and therefore a balanced order needs to be passed.

4. I am of the opinion that if the Appellants deposits 50% of the decretal amount plus interest of the Decree in the RCA Court,

further steps in execution can be stayed so as to balance convenience between the parties so that irreparable harm and prejudice is not caused to the Judgement Debtors. If that is done by the Appellants then appropriate directions can be passed for expeditious disposal of the Application for condonation of delay which is filed.

5. Mr. Rananaware informs the Court that the Judgment Debtors are ready and willing to deposit 50% of the decretal amount (including interest) which would amount to approximately Rs.23,00,000/- within a period of eight weeks from today. He would submit that considering that the Judgement Debtors are agriculturist they would require some time to accumulate the aforesaid amount and deposit the same before the District Court. He would submit that deposit of 50% of amount be considered as adequate security and appropriate directions be passed by the Court.

6. After hearing Mr. Rananaware and perusing the pleadings, I am of the opinion that considering the ambit and scope of powers of this Court under Article 227 of the Constitution of India, appropriate directions can be given even to the District Court in the present matter. Though proceedings before me are emanating from the order of issuance of arrest warrant in Execution proceedings, however in view of the aforementioned facts and pendency of RCA, the Execution proceedings are directed to be stayed immediately.

Resultantly, the impugned order dated 18.03.2024 passed by the Executing Court issuing arrest warrant against Judgement Debtors is stayed. Execution proceedings shall be held in abeyance and shall be revived if there is any default of this order.

7. In view of the above, this Court directs the hearing of Application for seeking condonation of delay in the RCA by the District Court within a period of 10 weeks from today. The said Application shall be decided on its merits by the concerned District Court subject to deposit of 50% of the entire decretal amount till today by the Judgement Debtors within 8 weeks. If the said 50% amount is not deposited, no extension of time shall be available to the Judgement Debtors for making the said deposit and the order dated 18.03.2024 issuing arrest warrants against the Judgement Debtors which is impugned in the present Writ Petition shall immediately stand revived and Executing Court shall be free to take further steps in executing the decree in accordance with law. The deposit undoubtedly is without prejudice to the rights and contentions of Judgement Debtors and shall be subject to the decision in the RCA, pursuant to hearing of the Application for condonation of delay by District Court on its own merits. All parties shall be heard by the District Court.

8. With the above directions, Writ Petition stands allowed and disposed.

Amberkar / HHS

[MILIND N. JADHAV, J.]

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SAWANT

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