

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.14118 OF 2024

SATISH  
RAMCHANDRA  
SANGAR

Digitally signed by  
SATISH RAMCHANDRA  
SANGAR  
Date: 2024.12.09  
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**Kiran Ramdas Pawar**

Age : 32 Years, Occupation : Agriculturist,

Residing at : Mendhapur,

Taluka : Pandharpur, District : Solapur.

...Petitioner

**Versus**

1. **Navnath Bandu Pawar**

Age : 67 Years, Occupation : Agriculturist

2. **Amar Navnath Pawar**

Age : 31 Years, Occupation : Agriculturist

3. **Mahadeo Janardhan Kale**

Age : 78 Years, Occupation : Agriculturist

4. **Subhash Janardhan Kale**

Age : 63 Years, Occupation : Agriculturist

All residing at : Mendhapur,

Taluka : Pandharpur, District : Solapur.

...Respondents

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| Mr.Samir Kumbhakoni:- | Advocate for Petitioner. |
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CORAM : S. M. MODAK, J.

DATE : 22<sup>nd</sup> NOVEMBER 2024

P. C. :-

1. Heard learned Advocate Shri.Kumbhakoni for the Petitioner / Defendant No.3. He is the purchaser of the Suit property from Defendant Nos.1 and 2. The Suit is for specific performance filed by the Plaintiffs.

2. The Defendant No.3 though appeared before the trial Court and was permitted to file the Written Statement as per the order dated 20<sup>th</sup> June 2017 subject to deposit of cost of Rs.1000/- (Rupees One Thousand) for some reason or other, he could not deposit the amount. That is why, the Suit proceeded further and resulted into passing of a Decree of specific performance.

3. The Defendant No.3 challenged the said Decree by way of a Regular Civil Appeal No.33 of 2021 and it is pending before the Court of District Judge – Pandharpur. The Defendant No.3 has decided to take a chance before the Appellate Court and expressed desire to deposit Rs.1000/- (Rupees One Thousand) which was imposed by the trial Court. He could not find favour from the Appellate Court and the prayer was rejected on 22<sup>nd</sup> January 2024. This order is under challenge. Considering a limited issue involved, I have disposed of the Petition without issuing a notice. It is for the reason, right of Plaintiff /

Decree-holder is not affected. The reason is instead of issuing notice and hearing him and keeping the Petition pending, it can be disposed of by giving certain directions to the trial Court.

4. Mr.Kumbhakoni made following submissions:-

- (a) The Plaintiffs have consented for deposit of Rs.1000/- (Rupees One Thousand) as per their reply which is on Page No.47. In spite of that, the Appellate Court refused the permission.
- (b) If, permission is granted by this Court to deposit the amount, his client will argue the Appeal.
- (c) The Appellate Court has not decided the Stay Applications. One is dated 7<sup>th</sup> July 2023 and second is dated 24<sup>th</sup> September 2024. Their copies are annexed. They are marked Annexure-X.

5. It is submitted that as the Stay is not granted by the Appellate Court, the Plaintiffs got executed a sale-deed on the basis of the Decree by appointing a Court Commissioner. But still, he contends that possession is with his client and that is why, he is seeking some protection from this Court.

6. Admittedly, Defendant No.3 has not deposited the amount before the trial Court. He is not coming with a case that he has

adduced any sort of evidence before the trial Court. No doubt, he has got a right to prefer an Appeal. What will be an outcome of the Appeal will be decided by the Appellate Court. During pendency of the Appeal, if the permission is granted to deposit the amount, the Written Statement has to be taken on record. But, simply taking the Written Statement on record, will not take up the case of the Defendant No.3 any further. If, the Written Statement is taken on record, what is its value, has to be decided by the Appellate Court. Even, the Appellate Court is required to consider, what will be the effect on the evidence already recorded and the impugned judgment.

7. In fact, in a given set of facts, such Application cannot be decided independently but that has to be decided when the main Appeal will be argued and decided. This Court feels that Petitioner / Defendant No.3 can be granted a liberty to move similar Application again before the Appellate Court and the directions can be given to the Appellate Court to decide along with the Appeal.

8. I believe on the submissions made by Mr.Kumbhakoni that the Stay Applications referred above are not decided. Once, the Decree is under challenge, the Appellate Court has to decide it in either way.

The sale-deed is executed as per the Decree but still, the Petitioner claims that he is in possession. He has got every right to have an observation from the Appellate Court on the issue of his claim. So, direction can be given to the Appellate Court to decide those Stay Applications as early as possible. Some limited protection can be granted by this Court. This protection is granted only for the purpose of streamlining the hearing of the Appeal. The Respondent is entitled to oppose continuation of stay. This Court has granted protection without making any observations about merits. The Appellate Court can take a final call. Hence, following order is passed:-

### ORDER

- (i) The Petitioner / Defendant No.3 is at liberty to file a fresh Application showing his willingness to deposit Rs.1000/- (Rupees One Thousand).
- (ii) If, the Petitioner is desirous, he can file such Application within two (2) weeks from today.
- (iii) If, such Application is filed, the Appellate Court to decide that Application along with final hearing of the Appeal.
- (iv) The Appellate Court is directed to decide the Stay Applications, if not already decided within a period of three (3) weeks from today on its own merit.

- (v) The possession of the Petitioner over the Suit land is protected for a period of two (2) weeks from today.
  - (vi) This observation is made presuming that he is in possession.
  - (vii) He is at liberty to request the Appellate Court for granting protection as to possession.
9. In view of above observations, Writ Petition is disposed of.
10. Parties to act on an authenticated copy of this order.

[S. M. MODAK, J.]