



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

Writ Petition (WP) No. 4515 of 2024

Smt. Chayyabai Wd/o Tulsiram Fandi and others

Versus

Deorao S/o Sitaram Vaidya

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri M.A.Qureshi, Advocate for the petitioners.

Shri A.M.Ghare, Advocate for the sole-respondent.

CORAM : N.R.BORKAR, J.

DATED : 23rd AUGUST, 2024.

This petition takes exception to the order dated 26th June, 2024 passed by the Joint Civil Judge, Senior Division, Nagpur in MJC No. 8 of 2012.

2. The petitioners are the legal representatives of late Shri Tulshiram Fandi. He along with petitioner No.7 had filed the suit for specific performance of agreement to sell against the respondent herein. The suit was filed by vendors. On 4th January, 2006 the trial Court passed the following decree :

- “i) The suit is partly decreed with proportionate costs.
- ii) The defendant shall do pay an amount of Rs.2,00,000/- to the plaintiffs alongwith interest @ 12.00% per annum from the date of suit i.e. 09/10/1997 till its realization, upto 30/04/2006. If the defendant

fails to make the payment within given time, the plaintiffs may recover the same by executing the decree through the court.

iii) The defendant may get the sale deed executed from the plaintiff in respect of the suit property on his own expenses, after making the payment of the above said amount and may transfer the license of Saw Mill on his name by taking an appropriate action, before the concerned Authority.

iv) A decree shall be drawn up, accordingly.”

3. Alleging non deposit of decretal amount as directed by the trial Court upto 30th April, 2006, the petitioners herein had filed an application under Section 28 of the Specific Relief Act for recession of contract. The trial Court has rejected the said application by the order impugned.

4. I have heard the learned counsel for the petitioners and the learned counsel for the respondent.

5. It is not in dispute that the trial Court by order dated 23rd September, 2009 permitted the respondent to deposit the decretal amount.

6. The learned counsel for the petitioner submits that in terms of decree, the decretal amount was to be deposited by 30th April 2006. It is submitted that admittedly, by that date, the decretal amount was not deposited. It is submitted that no notice was given to the petitioners before passing the order dated 23rd September, 2009. It is submitted that even other wise

the order dated 23rd September, 2009 was passed without prejudice to the rights of the parties and therefore, no benefit of the said order can be granted to the respondent. It is submitted that the trial Court thus erred in rejecting the application filed by the petitioners for recession of the contract.

7. On the other hand, the learned counsel for the respondent submits that the order passed by the trial Court dated 23rd September, 2009 was challenged before this Court and this Court declined to interfere in the said order. It is submitted that considering the overall facts and circumstances, no interference is called for in the impugned order.

8. Admittedly, the suit was filed by the vendors. There was no alternative prayer for recession of contract. Be that as it may the trial Court by order dated 23rd September, 2009 permitted the respondent to deposit the decretal amount. Admittedly, no steps were taken till the deposit amount to file the application for recession of contract and on the contrary it appears that in the year 2010, the execution for recovery of decretal amount was filed.

9. Considering the overall facts and circumstances of the case, I am not inclined to interfere

with the impugned order. Hence, the writ petition is dismissed.

[N.R.BORKAR, J.]