



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

WRIT PETITION NO. 6984 OF 2022

Shaikh Riyazuddin Shaikh Rahimuddin

VERSUS

Habibkhan Inayatulla Khan Pathan And Others

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Advocate for the Petitioner : Mr. R.N. Dhorde, Senior Counsel i/b Mr.
Jethliya Dhiraj R.

Advocate for Respondent Nos.1 to 3 : Mr. B.R. Kedar i/b Mr. Shaikh
M.S.

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CORAM : ROHIT W. JOSHI, J.

DATE : 19th AUGUST, 2025

P.C.:

1. Present petition arises out of judgment and order dated 10.02.2022 passed by the learned District Judge-1, Gangakhed dismissing Misc. Civil Appeal No.16 of 2021 filed by present petitioner. The present petitioner has filed the suit for specific performance of contract being Special Civil Suit No.08 of 2021.

2. The case of petitioner is of oral agreement with respect to suit property. It is claimed that the oral agreement is arrived at on 01.01.2010 in presence of three persons. The plaintiff claims that the parties had agreed that the suit property would be sold @ Rs.65,000/- per R. The plaintiff contends that he has paid a sum of Rs.5,55,000/-, Rs.6,10,000/- and Rs.2,50,000/- respectively to defendant nos.1 to 3 in terms of alleged oral agreement. The learned Trial Court has rejected the application for grant of temporary injunction filed by the plaintiff in

the said suit observing that the case of plaintiff was of oral agreement and its version that the amount of Rs.14,15,000/- was paid in cash without any written document is *prima facie* unbelievable. Referring to affidavits of three persons in whose presence the alleged oral agreement is arrived at, the learned Trial Court observed that merely on the basis of such affidavits, it cannot be said that plaintiff has made out *prima facie* case for grant of temporary injunction. Aggrieved by the said order, the plaintiff has preferred Misc. Civil Appeal No.16 of 2021 under Order 43 Rule 1(r) of the Civil Procedure Code. The said appeal is dismissed vide judgment and order dated 10.02.2022.

3. Perusal of reasons recorded by the learned Appellate Court will demonstrate that the learned Appellate Court has observed that the pleadings in the plaint do not indicate that oral agreement was arrived at between the parties in presence of three persons, whose affidavits were filed along with the suit. The learned First Appellate Court has also found that the monetary transaction between the parties regarding alleged payment of money by the plaintiff to defendant nos.1 to 3 is also not reflected in the affidavits filed by said three persons. Apart from this, the learned First Appellate Court has observed that there is no documentary evidence indicating payment of money such as cheque or RTGS or bank record etc. Although the learned Trial Court has rejected the application by a reasoned order, the reasons recorded by

the First Appellate Court are contrary to the record. The plaintiff does make a reference to three persons as witnesses to the alleged oral agreement and the affidavits of said persons also make reference to payment of money to defendant nos.1 to 3, as is mentioned in the plaintiff. Right to appeal is a valuable right of every litigant. The appeal is decided for reasons which are contrary to record. In that view of the matter, it will be appropriate that the matter is remanded to the learned Appellate Court for deciding the appeal afresh.

4. It needs to be clarified that this Court has not expressed any opinion as regards merits of the matter. This Court has also not dealt with contention of learned advocate for respondents/defendants that after rejection of application at Exhibit-5, another application for temporary injunction was filed by the plaintiff which is also rejected by the Trial Court as well as the learned First Appellate Court holding that the plaintiff had failed to make out *prima facie* case. Likewise, the conduct of plaintiff in deferring the trial of suit even since the year 2022 is also not considered since, all this is not reflected in the judgment passed by the learned Appellate Court.

5. All these contentions will be open for the respondent to raise before the learned Appellate Court while the appeal is heard by the learned Appellate Court.

6. Petition is partly allowed by quashing and setting aside judgment

and order dated 10.02.2022 passed by the learned District Judge-1, Gangakhed in Misc. Civil Appeal No.16 of 2021 with directions to decide the said appeal afresh.

[ROHIT W. JOSHI J.]