



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

WRIT PETITION NO.4542/2021

Shrimati Kalabai Madhukar Jagnade .Vs. Soma Nandkishor Ladse

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. N. Vyawahare, Advocate for petitioner.

CORAM : **ANIL L. PANSARE, J.**

DATE : **APRIL 2, 2025**

Heard learned counsel for the petitioner. None appeared for the respondent, though served.

2. Suit filed by the petitioner seeking specific performance of contract is decreed by Trial Court vide judgment dated 18.02.2009. Thereafter, the petitioner filed execution being R. D. No.14/2018. The Executing Court is said to have partly executed the decree, in the sense, it executed the registered sale deed in favour of the petitioner. The request made by the petitioner to hand over possession, however, has been rejected on the ground that in the decree, there is no direction regarding handing over possession of the suit land. The Executing Court has accordingly dismissed the Darkhast as not maintainable.

3. On the point of handing over possession of the suit property, counsel for the petitioner has invited my attention to the judgment passed by Coordinate Bench of this Court in **Baliram s/o Tulsiram Kakde .Vs. Raghunath Bhagwanji Hood [Writ Petition No.5129/2018, dt. 26.02.2020]**, wherein the Court referred to yet another judgment of the Coordinate Bench in the case of **Lotu Bandu Vs. Pundalik [1985 Mh.L.J. 359]**, wherein the Court held that it is not necessary to specifically claim interim relief of possession in the suit

for specific performance and the executing Court is competent to grant such relief.

4. In the light of the settled law, the Executing Court has apparently committed error in dismissing the Darkhast. The order impugned is, therefore unsustainable.

5. Resultantly, the writ petition is allowed. Impugned order dated 16.11.2021 passed below Exh.1 in R.D.No. 14/2021 is quashed and set aside. R.D. No. 14/2021 is restored to the file of Civil Judge Junior Division, Tumsar for consideration afresh, in accordance with law and what has been stated in the body of order. Needless to say, order dated 03.03.2020 passed below Exh.-15 in R.D.No.14/2018, rejecting request made by the petitioner to direct respondent to hand over possession of the suit land, is also quashed and set aside for the reasons stated above.

No order as to costs.

(Anil L. Pansare, J.)