



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

WRIT PETITION NO. 3858 OF 2021

Shri Bhanudas s/o Devidas Mali,
 age : 66 years, Occu : Agriculturist,
 R/o Zadegaon, Taluka Shegaon,
 District Buldhana

.. **Petitioner**

Versus

- 1) Sau. Asha Sadashiv Pahurkar,
 age : 54 years, Occu : Household,
 R/o Sawarna, Taluka Shegaon,
 Post Takli Vido, District Buldhana
- 2) Manoharrao Wamanrao Mankar,
 age : 73 years, Occu : Agriculturist,
- 3) Ganesh s/o Manoharrao Mankar,
 age : 53 years, Occu : Agriculturist,
 R/o Wadegaon, Mauli Krishi Kendra,
 Near S.T.Bus Stand, Taluka Balapur,
 District Akola
- 4) Sau. Rajnibai Ramkrushna Nemane,
 age : 50 years, Occu : Household,
 R/o Vrundavan Wadi, Near Technical
 School, Jalamb Road, Khamgaon -
 444 303
- 5) Chandrakant Manoharrao Mankar,
 age : 48 years, Occu : Agriculturist,
 Nos.2 and 5 R/o Post Mauli, Behind
 S.T.Stand, Vadegaon, Taluka
 Balapur, District Akola
- 6) Sau. Narmada Devidas Unhale
 age : 56 years, Occu : Household,
 R/o Khatkhed, Taluka Shegaon,
 District : Buldhana

.. **Respondents**

 Mr. M.S.Sharma, Advocate for petitioner.
 None for the respondents.

CORAM : ABHAY J. MANTRI, J.
DATED : JANUARY 07, 2025

ORAL JUDGMENT

Heard the learned Counsel for the petitioner. None appears for the respondents though served.

(2) The petitioner is challenging the order dated 24/09/2021, passed by learned District Judge-1 Khamgaon below Exh.5 in M.C.A.No.13/2021, thereby refusing to grant stay to the effect and operation of the order dated 02/09/2021 to detain the petitioner in Civil Prison for one month passed by Jt. Civil Judge Junior Division (for short- "Jt.C.J.J.D.") in Civil Application No.05/2010.

(3) Learned Counsel for the petitioner submitted that the petitioner had challenged the order passed by the learned trial Court on 02/09/2021 in M.C.A.13/2021 before the learned District Judge-1 Khamgaon. Despite the pendency of the appeal, the learned District Judge failed to consider the petitioner's prayer to stay the execution of the impugned order. Therefore, being aggrieved by the same, the petitioner has preferred this petition.

(4) Learned Counsel for the petitioner drew my attention to the order dated 02/09/2021 passed below Exh.1 and the subsequent order passed below Exh.73 on the same day by learned Jt. C.J.J.D., Shegaon, whereby the learned trial Court had stayed the execution of the final order passed in Civil Application No.05/2010 for one month.

(5) The learned District Judge has not considered the aforesaid facts and that the matter is sub-judice before him to determine the legality of the impugned order. Learned Counsel further submitted that initially, the petitioner was in dire need of money. Therefore, he executed the sale deed even though he had filed a pursis before the Trial Court. Subsequently, he rectified his mistake and cancelled the said sale deed. However, the learned Trial Court, as well as the appellate Court, did not take into consideration the said facts while passing the orders. In fact, the learned appellate Court ought to have stayed the effect and operation of the order dated 02/09/2021, but the learned appellate Court observed that the reasons stated by the petitioner were not satisfactory and refused to stay the order dated 02/09/2021.

(6) Lastly, he canvassed that the concept and purpose of O.39 R2-A of C.P.C. are not punitive, imposing a penalty, but implementing the interlocutory order, namely, the order of injunction passed by the Civil Court in the pending Suit. To buttress his submissions, he relies on judgment in ***V.G.Quenim (D) through Lrs and another vs. Bandekar Brothers Ltd., 2015 (1) Mh.L.J.421*** and ***Heinz India Pvt, Ltd. And another vs. Glazo Smithkline Consumer Healthcare Ltd. and others, AIR 2008 (NOC) 1228 (CAL.)***.

(7) I have considered the submissions of learned Counsel for the petitioner and gone through the impugned orders and records, as well as the judgments relied on by the petitioner.

(8) At the outset, it appears that by order dated 02/09/2021, learned Jt. C.J.J.D., Shegaon ordered the detainment of the petitioner in civil prison for one month upon deposit of subsistence allowance. The

said order is under challenge in Misc. Civil Appeal No.13/2021 before the learned District Judge – 1 Khamgaon. During the pendency of the same, the petitioner had moved an application to stay the order dated 02/09/2021; however, the learned appellate Court, without considering the facts of the case and the fact that the matter is sub-judice before him, straightway rejected the same.

(9) It is pertinent to note that the petitioner has been aggrieved by the order dated 02/09/2021 and challenged the same before the District Judge, which is sub-judice. In such an eventuality, until the said appeal is decided, it would be proper to stay the order dated 02/09/2021. If the order dated 02/09/2021 is not stayed, certainly great prejudice would be caused to the petitioner, and his appeal would become infructuous. Considering the same, in my view, it would be proper to stay the order dated 02/09/2021 till the disposal of the appeal. On the said ground itself, the application is liable to be allowed.

(10) Apart from the above, it is a settled position of law that Order 39, Rule 2-A was inserted in the Code by 1976 amendment only to arm the Court to compel someone to implement the order of the Civil Court passed in an interlocutory application u/O.39. The Civil Court is concerned with deciding the Civil litigation of the parties, and in the interlocutory stage u/O.39, orders may be passed, which, until vacated, the implementation of such is a matter of Courts for which Order 39, Rule 2-A is a statutory provision arming the Court to pass necessary orders of attachment and detention in civil prison, both or alternatively. Similarly, the jurisprudential concept and purpose of Order 39, Rule 2-A is not punitive to impose a penalty for default, but is to implement interlocutory orders passed in a pending suit.

(11) In the case at hand, the applicant has rectified his mistake by cancelling the sale deed; therefore, the petition is covered as per the law laid down in the judgment referred to above. In addition, the learned Counsel for the petitioner produced the copy of the order dated 20/01/2024 passed below Exh.1 in R.C.S.No.1/2007; thereby, the suit between the parties was dismissed u/O. 9 R.8 of the CPC. Thus, the order passed u/O.39 Rules 1 and 2 does not survive.

(12) In view of the above, I deem it appropriate to allow the petition in the following terms:-

- a) The impugned order dated 24/09/2021 passed by learned District Judge-1, Khamgaon, below Exh.5, is hereby quashed and set aside.
- b) The effect and operation of the order dated 02/09/2021, passed by learned C.J.J.D. Shegaon in Civil Application/MJC No.05/2010 is hereby stayed till the disposal of the M.C.A.No.13/2021.

(13) Inform the concerned Courts accordingly.

(ABHAY J. MANTRI, J.)

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