



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

WRIT PETITION NO.7617/2023

Gaurav Divakarrao Khairkar .Vs. Sau. Usha Sharad Jawanjale

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

Court's or Judge's orders

Mr. S. Alaspurkar, Advocate for petitioner
Mr. V. A. Kothale, Advocate for respondent.

CORAM : ANIL L. PANSARE, J.

DATE : FEBRUARY 24, 2025

Heard.

2. Respondent – original plaintiff succeeded in the suit filed by him for specific performance of contract. The Trial Court, while decreeing the suit, directed the respondent to deposit balance consideration amount within one month from the date of the decree, which was passed on 12.09.2017. It appears that respondent has deposited substantial part of the sale consideration but inadvertently failed to deposit Rs.35,000/-.

3. The petitioner – original defendant appeared in the execution proceedings and raised objection that Rs.35,000/- has been not deposited by the respondent. The said objection was countered by the respondent by filing application seeking permission to deposit the amount. This application has been allowed by the Executing Court.

4. Argument is that the Executing Court could not have extended the time and it is only the Court dealing with the suit that could extend the time. This aspect, according to the petitioner's counsel, was not considered by the Courts below.

5. The First Appellate Court has upheld the order passed by the Trial Court permitting the respondent to deposit the amount.

6. Counsel for the petitioner intends to reply upon the judgment of the Supreme Court in the case of *Ramankutty Gupta Vs. Avara, [AIR 1994 SC 1945]*, in support of his argument that the Court, after passing the decree for specific performance of contract, does not cease to have jurisdiction and it retains the control over the decree and it is open to the Court to exercise the powers under Section 28(1) of the Specific Relief Act, 1963 either for extension of time or for rescinding the contract.

7. In the present case, the Executing Court and the Court which had tried the suit are one and the same. It is just the question of filing application in appropriate proceedings. Thus, the Executing Court could have entertained the said application in the original suit and passed same order viz. allowing the respondent to deposit the balance consideration amount.

8. Counsel for the petitioner submits that he may be permitted to raise aforesaid plea before the First Appellate Court, who is seized of the matter but has rejected the application granting stay. Counsel for respondent submits that he has no objection; rather appropriate remedy was to argue the matter on merit before the First Appellate Court.

9. That being so, the purpose will be served if the petitioner is permitted to raise the aforesaid objection before the First Appellate Court who shall decide the same, taking into consideration the law laid down by the Supreme Court in *Ramakutty's* case as also judgment that would be relied upon by the parties, if so desired.

10. The petition is disposed of in the above terms. No order as to costs.

11. At this stage, learned counsel for the respondent has made request to direct First Appellate Court to decide the appeal within time bound manner. This request, to my mind, should be made before

the First Appellate Court and if the request is so made, the First Appellate Court will consider it on its own merit.

12. The request is accordingly rejected with liberty to make such request before the First Appellate Court.

(Anil L. Pansare, J.)

Kahale