



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

WRIT PETITION NO.5763/2024

1. Somprakash Keshardev Murarka
Aged 76 years, Occ. Retired
2. Vikas Somprakash Murarka
Aged about 46 years, Occ. Service
3. Yogesh Somprakash Murarka
Aged about 44 years, Occ. Service
4. Archana d/o Somprakash Murarka
Aged about 48 years, Occ. Household

All Nos.1 to 4 R/o. Murarka Bhawan,
Gandhi Chawk, Shegaon,
Tq. Shegaon Dist. Buldana

... PETITIONERS

...VERSUS...

Nawalkishor s/o Gokulchand Murarka
Aged 80 years, Occ. Business
R/o. At Navjeevan Kailash Apartment,
4th Floor, Plot No.D-1, Geeta Nagar,
Akola Tq. And Dist. Akola

...RESPONDENT

Shri M.G. Sarda, Advocate for petitioners
Shri D.R. Goenka, Advocate for respondent

CORAM : SMT. M. S. JAWALKAR, J.

DATE OF RESERVING THE JUDGMENT : 16/01/2025

DATE OF PRONOUNCING THE JUDGMENT: 27/01/2025

JUDGMENT

. Heard learned Counsel for petitioners and learned Counsel for respondents.

2. Petition is filed to challenge the judgment and order dated August 14, 2024, passed by the learned District Judge-02, Khamgaon, in Misc. Civil Appeal number 08/2020. This judgment upheld the order dated July 27, 2020, passed by the learned Civil Judge Junior Division, Shegaon (Trial Court) in Regular Civil Suit No. 47 of 1999. The Trial Court's order rejected the petitioner/defendant's application for restoring their defence.

3. Original Plaintiff filed RCS against the present petitioner/defendant seeking Declaration, Permanent Injunction, and other reliefs. In this suit, the Court granted a temporary injunction in favor of the respondent on November 20, 1999, restraining the petitioners from selling or transferring the suit field (survey number 317/1, measuring 9 hectares 56 ares) until the disposal of the suit.

4. On 28.04.2019, the respondent/plaintiff filed an

application (Exhibit 213) under Order 39 Rule 11 of the Code of Civil Procedure in the aforesaid suit, praying to strike off the petitioner's defense due to an alleged violation of the temporary injunction order. The respondent contended that the petitioners violated the order of temporary injunction by executing a sale deed for the suit field in favor of Mr. Dyaneshwar Patil and others on January 22, 2009. This sale deed was registered with the Sub-Registrar at Shegaon.

5. The Trial Court granted the respondent's application on August 4, 2009, and ordered the petitioner's defense to be struck off. This order was challenged up to the Hon'ble Supreme Court in Special Leave Petitions 36290/2015 and 36291/2015. The Supreme Court dismissed these petitions on June 29, 2016, observing that –

“Delay condoned.

We are not inclined to interfere with the impugned order issued by the High Court in the given situation. However, we may record the submission of Mr. V. Giri, learned senior counsel appearing for the petitioner that the sale deed in question has already been cancelled which fact is confirmed by the purchasers as well and, therefore, he would like to move an application

under Rule 11(2) of Order 39 CPC as applicable to State of Maharashtra. Mr. P.H. Parekh, learned senior counsel appearing for respondent no.1 denies and submits that the purchasers have, in fact, effected further sale(s) of the property by executing registered sale deeds.

Be that as it may, in case the given suggestion on behalf the petitioner is correct, it is always open for his client to move an application under Rule 11(2) of Order 39. As and when such application is made, the same shall be considered by the Trial Court on its own merits.

The sum of Rs. 40 lacs which was deposited by the petitioner in pursuance of the order of this Court shall be refunded to him. However, the interest accrued on the same shall be released in favour of respondent no.1 by way of cost of these proceedings.

The Special Leave Petitions are dismissed.

Application(s) pending, if any, shall stand disposed of accordingly.”

6. Accordingly, the petitioners filed an application under Order 39 Rule 11(2) of the Code (Exhibit 293), requesting the restoration of their defense and an opportunity to defend the suit. They stated that the purchasers named in the sale deed dated January 22, 2009, executed a cancellation deed on July 30, 2011,

thereby cancelling the sale. The petitioners emphasized that they had taken all possible steps to remedy the alleged breach of the interim injunction order.

7. After considering the matter before it learned Trial Court observed that defendants have failed to establish about the circumstances for restoration of their defence and also failed to show the sufficient reasons for restoration of their defence as per the provision of Order 39 Rule 11(2) of the C.P.C. and accordingly, rejected the application of the defendants. Being aggrieved by the same the defendants preferred MCA before the learned District Judge. The learned District Judge, observed that till date there is no credible document to show that sale deed dated 22/01/2009 is cancelled and hence the defendants are not entitled for restoration of their defence and accordingly, dismissed the appeal. The aforesaid order is the subject matter of challenge in the present writ petition.

8. learned counsel for the petitioner contended that the cheques issued by the purchasers towards the sale consideration

were not honoured or paid to them. The sale deed dated January 22, 2009, specifically states that the sale would not be effective, and possession would not be transferred until the entire sale consideration was paid. The title and possession remained with the petitioners (the vendors). Therefore, based on the recitals in the sale deed, the petitioners stated that the property was never transferred to the purchasers, and consequently, there was no breach of the temporary injunction order as alleged by the respondent.

9. Learned counsel for the petitioner further contended that the Plaintiff in his application under order 39 rules 1, 2 and 3 r/w section 151 of CPC, for a temporary injunction stated that the sale transaction was not yet complete and title and ownership had not been transferred to the purchaser, as it was contingent upon the encashment of all three post dated cheque. Thus, the plaintiff acknowledged that the sale deed was incomplete and there was no transfer of property. Even the Trial Court observed that the it was a condition precedent in the sale deed that the sale transaction would be completed only after the encashment of the cheques in question.

Hence prayed for the interference by this court in the impugned order and which needs to be set aside.

10. Learned Counsel for the respondent contended that both the lower Courts below have rightly taken into consideration the facts on record and passed appropriate order which needs no interference, which needs to be confirm and prayed for the dismissal of the present petition.

11. Heard both the parties, perused documents placed on record and impugned order passed by Civil Judge Junior Division, Shegaon as well as learned District Judge-02, Khamgaon. It is admitted fact that the temporary injunction was granted in the suit bearing No. RCS No.47/1999 restraining the petitioner from selling or transferring the suit field. On application filed by the plaintiff under Order 39 Rule 2 of the C.P.C. prayed for striking of defence of the petitioner as he has violated injunction order. He has executed a sale deed in favour of Shri Dnyaneshwar Patil and others on 22.01.2009., which was registered before Sub Registrar at Shegaon. The learned Trial Court allowed the application of plaintiff and

struck of the defence. The said order was confirmed by the High Court and Special Leave Petition filed before the Hon'ble Supreme Court also came to be dismissed. However, it appears that on the statement made by learned Advocate appearing for defendant that sale deed is already been cancelled, however, the Counsel for purchaser denied this fact. Therefore, the Hon'ble Apex Court granted liberty if at all such sale-deed is cancelled to move application under Rule 11 (2) of Order 39 of the C.P.C., which will be considered on its own merits. Filing of pursis by purchaser cannot be considered as restoration of previous status.

Order 39 Rule 11 if any party commits any default in respect of or contravenes such order or commit a breach of such undertaking, the Court may dismiss the suit or proceeding, if the default or contravention or breach is committed by the plaintiff or the applicant, or strick out the defences, if the default or contravention or breach is committed by the defendant or the opponent.

Clause (2) there is power given to the Court. The Court may, on sufficient cause being shown and on such terms and conditions as it may deem fit to impose, restore the suit or proceeding or may

hear the party in defence, as the case may be, if the party that has been responsible for the default or contravention or breach as aforesaid makes amends for the default or contravention or breach to the satisfaction of the Court.

12. In the present matter, the learned Trial Court rightly appreciated this fact that there are litigation pending between the defendant herein and purchaser. As such, it is not concluded that sale-deed is cancelled unless it is declared by any Court that sale-deed is cancelled or not taken effect, till then it cannot be held that it is stood cancelled. There is no application for re-conveyance of sale-deed so as to restore the position back.

13. Though, it is contention of respondent that on the basis of incorrect statement before the Hon'ble Apex Court, liberty was granted to move such application, however, in fact the said sale-deed is not cancelled yet. It is also matter of record that the defendant received part consideration and *prima facie* sale is appears to be completed. Whether there is any part payment or subsequent offer would be the subject of pending suit between

purchaser and defendant. All these aspects are considered by the learned Trial Court and rightly rejected the application for restoration of defence.

14. As such, the order dated 14.08.2024, passed by the learned District Judge-02, Khamgaon, in Misc. Civil Appeal No.08/2020 and the order dated 27.07.2020, passed by learned Civil Judge Junior Division, Shegaon in Regular Civil Suit No. 47/1999 needs no interference. As such, petition stands dismissed.

R.S. Sahare

(Smt. M.S. Jawalkar, J.)