



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

APPEAL AGAINST ORDER No.4 OF 2025

(Shri Abhushan Bharat Kamble Vs. Shri Ramnakar Krushnamohanrao Korpati and others)

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

Court's or Judge's orders.

Mr. A.S. Manohar, Advocate for appellant.

Mr. S.P. Bhandarkar, Atharva Khadse and Saurabh Bhande, Advocate for
respondent Nos.4 to 7 and 12.

CORAM : ANIL L. PANSARE, J.

DATE : 8th MAY, 2025.

1. Having heard both sides it appears that the trial Court has allowed the application filed by the respondent Nos.4,7,9 and 12 under order XXXIX Rule 4 on the ground that the petitioner-plaintiff has not disclosed pendency of another suit being Special Civil Suit No.228/2021. The petitioner is accordingly blamed of suppressing material facts.

2. In this context, counsel for petitioner submits that alongwith petitioner three others entered into the agreement to sale with the respondents noted above. The petitioner chose to file suit for specific performance of contract seeking relief to the extent of his share i.e. $\frac{1}{4}^{\text{th}}$ share in the property under question. Pending suit the trial Court was pleased to allow the application Exhibit-5 filed by the petitioner and thereby restrained defendants from creating third party interest in the suit property.

3. The above respondents then filed application under Order XXXIX Rule 4 and as stated above the same was allowed on the count that the petitioner suppressed filing of suit, which was

filed subsequently.

4. The said suit has been filed by three other persons, who joined petitioner in agreement to sale. The said persons, (who are original defendants Nos.1 to 3) respondent Nos.1 to 3 appears to have filed suit for specific performance of contract against rest of the respondents-defendants. It further appears that on 6th October, 2023 the trial Court was pleased to reject application filed by the respondent Nos.8(1) and 8(2) seeking stay to the instant suit on the ground that subsequent suit and not initial suit could be stayed. Thus, the parties and Court in October 2023 was aware of the fact that subsequent suit has been filed in respect of same property.

5. The counsel for petitioner submits that the aforesaid suit having been filed subsequently, there arises no question of mentioning said suit in the plaint or in the application Exhibit-5 filed alongwith plaint. Further, the so called subsequent development was within the knowledge of all concerned including the Court and, therefore, the petitioner could not have been blamed for suppressing any material fact.

6. Issue notice to the respondents, returnable after Summer Vacation 2025.

7. Mr. S.P. Bhandarkar, learned counsel waives notice on behalf of respondent Nos.4,5,6,7 and 12.

8. In the meantime, there shall be stay to the impugned order dated 29.3.2025, passed by the Joint Civil Judge, Senior Division, Nagpur, passed in Special Civil Suit No.169/2020.

9. The petitioner shall serve the notice to the rest of the respondents by speed post in addition to regular mode of service and shall file affidavit of service on next date.

10. The petitioner shall comply with the Practice Note No.15 of the Bombay High Court Appellate Side Rules, 1960 particularly clause (5) thereof.

(ANIL L. PANSARE, J.)

Wadode