

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (ST) NO. 21007 OF 2024

Vishnu Babanrao Kapase .. Petitioner
Versus
Zumbarlal Dnyanoba Murkute & Ors. .. Respondent
.....
• Mr. Kishor Patil i/by Mr. Sidheshwar N. Biradar for Petitioner
.....

CORAM : MILIND N. JADHAV, J.

DATE : JULY 26, 2024

P. C.:

1. Not on board. Mentioned. Taken on board.
2. Perused the praecipe dated 26.07.2024.
3. Heard Mr. Patil, learned Advocate for Petitioner.
4. By virtue of the impugned judgment & order dated 22.07.2024 passed in Civil Misc. Application No. 26/2024, leave to file Appeal to challenge the exparte judgment & decree dated 24.03.2015 passed by the learned Trial Court in RCS No. 61/2023 stands rejected. Petitioner was not a party to the Suit proceedings but the Suit property was purchased by him prior to the passing of the exparte judgment and decree.
5. Mr. Patil would draw my attention to Exh. C at page Nos. 32-48 of the Writ Petition which is a registered sale deed dated 06.12.2012 executed by Defendants (Respondent Nos. 2 and 3 herein) in favour

of the Petitioner. It is also averred in the Petition that pursuant to the said sale deed the Suit property which was the subject matter of the sale deed stood mutated in the name of the Petitioner in the revenue record. In that view of the matter and while apprehending execution proceedings under the ex parte judgment & decree dated 24.03.2015, Petitioner has filed the Regular Civil Appeal in respect of which leave to file the Appeal has been rejected. Operative part of the impugned order dated 22.07.2024 is appended at Exh. A, page No. 29 of the Petition since the reasoned speaking order is not available.

6. On the basis of the above, an arguable case is made out by Mr. Patil for issuance of notice. Hence, issue notice to the Respondents made returnable on 12.08.2024. Humdast permitted. In addition to Court's notice, Petitioner is directed to serve copy of the Petition along with copy of this order on the Respondents and inform them about the next date of hearing by any permissible mode of service and file appropriate affidavit of service with tangible proof thereof on or before the next date. After receiving the notice, Respondents to file affidavit-in-reply on or before the next date, if so desired with an advance copy to the Advocate for Petitioner.

7. Respondents are directed to remain present either by themselves or through their Advocate on the next adjourned date. It is made clear that if Respondents remain absent despite service on the

next adjourned date, this Writ Petition shall be heard and disposed of at the stage of admission in the absence of the Respondents.

8. In view of the above facts, the impugned order dated 22.07.2024 is stayed. In the meanwhile it is directed that no coercive steps shall be taken by the Executing Court or by any Court in respect of the exparte judgment & decree which is the subject mater of the present Writ Petition against the Petitioner.

9. Liberty is granted to the Petitioners to append the reasoned order as and when available from the learned Trial Court. Registry is directed to permit the Petitioner to annex the reasons order. Amendment to that effect is permitted to be carried out upto the next adjourned date. Re-verification stands dispensed with. Copy of the amended Writ Petition shall be served afresh on the Respondents after the amendment to the above effect is carried out.

10. Stand over to **12th August, 2024.**

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[MILIND N. JADHAV, J.]

Digitally signed
by RAVINDRA
MOHAN
AMBERKAR
Date:
2024.07.26
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