

ORDER BELOW EXHIBIT - 5

IN REGULAR COMMERCIAL CIVIL APPEAL NO.3/2024

- [1] Heard Learned Advocates for the respective parties. Read the record. Appellant/Original defendant has filed an appeal being aggrieved and dissatisfied with the decree passed by the learned Commercial Court & Principal Senior Civil Judge, Mahesana dated 14-05-2024 in Commercial Civil Suit No.45/2023.
- [2] After perusal of the evidence and after hearing the arguments of the Learned Advocates of the parties the learned Trial Judge has come to the conclusion and allowed the Suit of plaintiff and passed the money decree against the present appellant. Hence, original defendant has filed this appeal. In this present appeal, the appellant has filed this application (Exh.5) to stay proceeding of execution petition and also prayed to stay operation and implementation of the said decree.
- [3] Heard Learned Advocate, Mr. V.P. Parmar, appearing on behalf of the appellant. It is argued before me that where appellant has challenged the said decree the execution petition is likely to be stayed Provision of Order 41, Rule 5 of the Code governing the question of granting or refusal of stay of execution of the decree by the Appellate Court, makes it clear that it does not make any distinction between money decree and the other decrees. Even with regard to the money decree, the discretion of the Court is circumscribed by the same limitation as imposed under the provision of Order 41, Rule 5.

[4] As against this, Learned Advocate appearing on behalf of the respondent has argued before me that the learned Trial Judge was pleased to allow the Suit of the respondent. It is further argued that it is well settled law that where the suit is allowed on merits, the application to stay the proceedings of the execution petition is not tenable, and hence, it is liable to be rejected. It is contended that no stay of execution petition of the decree should be granted by the Court in as much as the decree under execution is a money decree.

[5] I have considered the arguments advanced by the learned Advocates of both the sides in the present appeal. The appellant has challenged the said judgment and decree and the appeal is already admitted and is pending for final hearing. Considering the facts and circumstances of the case, I am of the view that if the execution of money decree is stayed during pendency of the appeal on security of payment of 50% of decretal amount by the appellant, it will serve the purpose. Thus, considering the facts and circumstances, I pass the following order in the interest of justice.

ORDER

[1] The Application is hereby allowed.

[2] The judgment and decree passed by learned Commercial Court & Principal Senior Civil Judge, Mahesana in Commercial Civil Suit No.45/2023 dated 14-05-2024 is hereby stayed till further order with a condition that the appellant should deposit 50% of decretal

amount in the Lower Court within 15 days of this Order.

[3] It is further ordered that if appellant fails to deposit the amount as per the direction of this Court, the stay directed as para 2 of the order portion will automatically be vacated.

[4] Yaadi to be sent to the learned learned Commercial Court & Court of Principal Senior Civil Judge, Mahesana accordingly.

Signed and pronounced in the open Court on 08th day of July, 2024 at Mahesana.

Date:08.07.2024 **(Jitendra Rameshchandra Shah)**
Place: Mahesana. Principal District & Sessions
Judge, Mahesana
Judge Code : GJ01044