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**IN THE COURT OF PRINCIPAL DISTRICT JUDGE
(MR.R.T.PANCHAL), NARMADA, AT - RAJPIPLA**

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**ORDER BELOW EXH.5 IN REGULAR CIVIL APPEAL
NO.25 OF 2024**

- [1] Present appellant/defendant has preferred this application Exh.5 for injunction in this appeal to stay execution of Judgment & Decree dated 02.02.2024 passed in Regular Civil Suit No.201/2021 passed by the learned Additional Senior Civil Judge, Rajpipla Dist. Narmada, till final disposal of the present appeal.
- [2] Ld. Advocate Mr. S.K. Joshi for the appellant/defendant has mainly relied on the contentions raised in the memo of appeal Exh.1 and has further argued that the appellant/defendant has filed the present appeal against the Judgment & Decree dated 02.02.2024 passed in Regular Civil Suit No.201/2021 by the learned Additional Senior Civil Judge, Rajpipla, Dist. Narmada and there are considerable substances prima-facie to allow the present appeal. It is further submitted that the he filed written arguments and cross-examined the witnesses thereafter case was transferred to the Court of Additional Senior Civil Judge Rajpipla but he did not get

opportunity to file evidence in support of his defence and his right was closed, and on only one adjournment his right for argument was closed and order of compensation of Rs. 11,67,400/- was passed in favour of original plaintiffs on 02/02/2024 and if the Judgment & Decree of learned Trial Court is executed at this juncture, then the appellant's right over the suit land will be frustrated and the appellant will have severe financial loss and the present appeal filed by the appellant will become infructuous. It is further submitted that if the execution of Judgment & Decree is stayed at this stage, then there will not be any harm to the respondents, whereas there will be irreparable loss to the appellant in terms of money and therefore the balance of convenience is in favour of the appellant. Lastly, it is prayed to stay the Judgment & Decree dated 02.02.2024 passed in Regular Civil Suit No.201/2021 till final disposal of the present appeal.

- [3] Ld. Advocate Ms. S.A. Tadvī/Mr. A.F. Solanki appeared on behalf of the respondents and filed written objection/arguments vide Exh. 9 in which he has stated that the injunction application filed by the appellant is not maintainable and hence it is required to be rejected along with the cost. It is also submitted that the learned Trial Court has passed the Judgment & Decree on merit therefore, the interim injunction application of appellant is not maintainable. It is further submitted that the

learned Trial Court has passed legal and proper Judgment & Decree and it does not require any interference. Lastly, it is prayed to dismiss the present injunction application Exh.5 along with cost in the interest of justice.

- [4] Learned advocate Mr. S.K. Joshi for the appellant/original defendant has filed a purshis vide Exh. 13 in which he has stated that if stay application is granted, then he is ready to pay 10% of total awarded amount.
- [4] This Court has gone through the present application, Judgment & Decree and record of the learned Trial Court, oral arguments on behalf of the respondents as well as submissions made by learned advocates for the parties. Considering the overall facts and circumstances, it appears that if the execution of impugned Judgment & Decree is not stayed at this juncture and respondents execute the decree in execution proceeding in the Civil Court against the present appellant, then the appellant's right of the appeal to get the judgment from the Appellate Court on merits, will be frustrated and the present appeal filed by the appellants will become infructuous. In these circumstances, there is prima-facie case and balance of convenience in favour of the appellants at this stage for interim injunction. When the prima-facie case and balance of convenience are in favour of the appellant at this stage, then there may be irreparable loss to the appellant about his right of appeal

in absence of injunction. The ld advocate has filed purshis Exh. 13 to deposit 10% of total awarded amount but it would not be just and proper. In view of the above discussion, I come to the conclusion that the present injunction application is required to be allowed with condition to deposit 40% awarded amount before this Court by appellant/original defendant. Therefore following order is passed accordingly.

ORDER

- [1] The appellant's present interim injunction application Exh.5 is hereby partly allowed. It is hereby ordered that with condition to deposit 40% awarded amount of judgment and decree of Trial Court before this Court by appellant/original defendant, the execution of Judgment & Decree dated 02.02.2024 passed in Regular Civil Suit No.201/2021 by the learned Additional Senior Civil Judge, Rajpipla Dist. Narmada, is hereby stayed till final disposal of the present appeal.
- [3] The appellant is directed to remain present for final hearing of the appeal on each and every adjournment date, without fail.
- [4] The cost should follow the final order of the appeal.
- [5] Copy of this order be sent to Trial Court for information.

Signed and pronounced in the Court today on 1st day of January, 2025.

Date: 01/01/2025
Place: Rajpipla

(Rameshkumar Thakorbhai Panchal)
(GJ00413)
Principal District Judge,
Narmada, At - Rajpipla