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

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**ORDER BELOW EXH.4 IN REGULAR CIVIL APPEAL
NO.23 OF 2023**

- [1] Present appellant (original defendant) has preferred this application Exh.4 for injunction in this appeal to stay execution of Judgment & Decree dated 07.06.2023 passed in Regular Civil Suit No.78/2022 by the learned Additional Civil Court Porbandar, till final disposal of the present appeal.
- [2] Ld. Advocates Mr. J. K. Joshi and Mr. H. H. Modhvadiya for the appellant (original defendant) have mainly relied on the contentions raised in the memo of appeal Exh.1 and has further argued that the appellant has filed present appeal against the Judgment & Decree dated 07.06.2023 passed in Regular Civil Suit No.78/2022 by the learned Additional Civil Court Porbandar and there are considerable substances prima-facie to allow the present appeal. It is further submitted that if the impugned Judgment & Decree is executed at this juncture, then the appellant will have severe financial loss and the present appeal filed by the appellant will become infructuous. It is further submitted that no sale transaction was executed as alleged in the suit filed by the original plaintiff (present respondent). 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 respondent, 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 07.06.2023 passed in Regular Civil Suit No.78/2022 till final disposal of the present appeal.

- [3] Ld. Advocate Mr. S. H. Parmar for the respondent has filed written arguments vide Exh.8 against the present appeal, in which it is mainly objected the present appeal and submitted that the judgment & decree passed by the learned Trial Court is legal, proper and it does not require any interference and it is also prayed to reject the present appeal along with cost.
- [4] Ld. Advocate for the appellant has filed pursis vide Exh.9 in which it is submitted to pass necessary order with condition to deposit an amount which the Hon'ble Court feels just and proper. It is declared that the appellant will not delay the proceedings of the present appeal.
- [5] Ld. Advocate Mr. S. H. Parmar for the respondent has made an endorsement below Exh.9 to pass necessary order for cost and to deposit the cost in the matter.
- [6] The R&P of the learned Trial Court for Regular Civil Suit No.78/2022 was called for and considered.

[7] This Court has gone through the present application, Judgment & Decree of the learned Trial Court, reply Exh.08 filed by the respondent as well as submissions made by learned advocates for the parties. This Court has also considered pursis Exh.9 filed by the Ld. Advocate for the appellant, in which it is submitted to pass necessary order with condition to deposit an amount which the Hon'ble Court feels just and proper. Moreover, the appellant has also declared that the appellant will not delay the proceedings of the present appeal. In this regard, Ld. Advocate for the respondent has made an endorsement below the said pursis Exh.9 to pass necessary order for cost and to deposit the cost in the matter. Here in the present case, the learned Trial Court has passed Judgment & Decree directing the defendant to execute the sale-deed for the property in question in favour of the plaintiff (present respondent) and also prevented the defendant (present appellant) to evade or encroach upon the portion of property in question or interrupt the possession of the plaintiff (present respondent) in any manner.

Looking to the record and circumstances, it appears that if the execution of impugned Judgment & Decree is not stayed at this juncture and respondent execute the decree and execute the registered sale-deed for the property in question in his favour from the appellant during pendency of this appeal, then in such a

circumstances, the present appeal filed by the appellant will become infructuous. Considering the overall facts and circumstances, this Court is having prima-facie considered opinion that there is prima-facie case and balance of convenience in favour of the appellant at this stage. When the prima-facie case and balance of convenience are in favour of the appellant at this stage, then there may be irreparable loss. In such a circumstances, there may be irreparable loss to the appellant about the right of the appeal. In view of the above discussion, I come to the conclusion that the present injunction application Exh.4 is required to be allowed with condition and therefore following order is passed accordingly.

ORDER

- [1] The appellant's present interim injunction application Exh.4 is hereby partly allowed.
- [2] The execution of Judgment & Decree dated 07.06.2023 passed in Regular Civil Suit No.78/2022 by the learned Additional Civil Court Porbandar, is hereby stayed till final disposal of the present appeal on following condition.
 - (a) The appellant is hereby directed to deposit security amount of proposed cost Rs.30,000/- (Rupees Thirty Thousand Only) in the District Court within one month, if any order for cost will be passed in the final order of the appeal.

(b) If the appellant fails to deposit the said amount within one month, then this order will be treated as cancelled.

Signed and pronounced in the Court today on 14nd day of October, 2023.

Date: 14/10/2023
Place: Porbandar

(Rameshkumar Thakorbhai Panchal)
(GJ00413)
Principal District Judge,
Porbandar.