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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.22 OF 2022**

- [1] Present appellants have preferred this application Exh.4 for injunction in this appeal to stay execution of Judgment & Decree dated 09.08.2018 passed in Regular Civil Suit No.135/2012 by the learned Principal Senior Civil Court Porbandar, till final disposal of the present appeal.
- [2] Mr. S. B. Jethwa, Ld. DGP for the appellants has mainly relied on the contentions raised in the memo of appeal Exh.1 and has further argued that the appellants have filed the present appeal against the Judgment & Decree dated 09.08.2018 passed in Regular Civil Suit No.135/2012 by the learned Principal Senior Civil Court Porbandar and there are considerable substances prima-facie to allow the present appeal. It is also submitted that the appellants will have severe loss if the impugned Judgment & Decree will be executed. It is further submitted that the respondents will not have any loss if the execution of impugned Judgment & Decree will be stayed till final disposal of the present appeal and hence the balance of convenience is in favour of the appellants. It is further submitted that the original plaintiff No.1 (present respondent No.1) has also filed Regular

Execution Petition No.48/2018 before the learned Second Additional Senior Civil Court, Porbandar for execution of the above mentioned impugned Judgment & Decree passed by the learned Trial Court and therefore, it is submitted that if the said Judgment & Decree passed by the learned Trial Court is executed and implemented, then the present appeal will become infructuous and hence, the same is required to be stayed at this stage. Lastly, it is prayed to stay the Judgment & Decree dated 09.08.2018 passed in Regular Civil Suit No.135/2012 till final disposal of the present appeal.

- [3] Ld. Advocate Mr. B. B. Lakhani appeared on behalf of the respondents and filed written objections vide Exh.12 objecting the present application Exh.4. He has mainly argued that the learned Trial Court has passed the Judgment & Decree on dated 09.08.2018 and the present injunction application has been filed after a long period of four years and hence, the present injunction application is required to be rejected. It is further submitted that the sale-deed has been executed for the land property in the name of respondents and in this regard, names of respondents have been entered in the revenue records and there is no any loan pending in the matter. It is further submitted that the respondents are ready to pay the due amounts of the Government and when the respondents are ready to pay the due amounts, then there is no requirement of interim injunction. It is further submitted that if the stay of execution of the

Judgment & Decree passed by the learned Trial Court is allowed, then the respondents will have severe financial loss. Lastly, it is prayed to rejected the present application Exh.4 in the interest of justice.

- [4] The R&P of the learned Trial Court for Regular Civil Suit No.135/2012 was called for and considered.
- [5] This Court has gone through the present application, Judgment & Decree of the learned Trial Court, written objections Exh.12 filed by the respondents as well as submissions made by learned advocates for the parties. 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 appellants at this stage. When the prima-facie case and balance of convenience are in favour of the appellants at this stage, then there may be irreparable loss. Further, it also 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 appellants then in such a circumstances, the present appeal filed by the appellants will become infructuous. In such a circumstances, there may be irreparable loss to the appellants 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 and therefore following order is passed accordingly.

ORDER

- [1] The appellants' present interim injunction application Exh.4 is hereby allowed.
- [2] The execution of Judgment & Decree dated 09.08.2018 passed in Regular Civil Suit No.135/2012 by the learned Principal Senior Civil Court Porbandar, is hereby stayed till final disposal of the present appeal.
- [3] The appellants are directed to remain present during the proceedings of the present appeal without fail.
- [4] The cost should follow the final order of the appeal.

Signed and pronounced in the Court today on 3rd day of February, 2023.

Date: 03/02/2023
Place: Porbandar

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