

22.12.2020

ORDERS ON I.A.NO.II

The Appellant has filed this application under Order 3 Rule 2 R/w. Section 151 of CPC praying to accord necessary permission to file the present appeal on her behalf by her General Power of Attorney Holder, which has been marked on Ex.P.1 before the Trial Court in O.S.No.281/2009.

2. The General Power of Attorney Holder of the Appellant has sworn an affidavit annexed to this application.

3. I have gone through the contents of affidavit and records.

4. Through her General Power of Attorney Holder, the Appellant has filed this appeal and on perusal of the records, it appears that, the General Power of Attorney executed in favour of her General Power of Attorney Holder by the Appellant is marked at Ex.P.1. It is also clear from the records that, the Appellant has also represented in the said suit in O.S.No.281/2009 through her General Power of Attorney Holder. Since the Appellant has been

represented her through her General Power of Attorney Holder, which is marked at Ex.P.1 before the Trial Court in O.S.No.281/2009 and since the Appellant has preferred the present appeal as against the impugned Judgment and Decree dated 11.11.2020 passed in O.S.No.281/2009, it is just, proper and necessary to accord permission to the Appellant to file the present appeal on her behalf through her General Power of Attorney Holder. Therefore, there are merits in the present application filed by the General Power of Attorney Holder of the Appellant and as such, it is required to be allowed. Accordingly, I proceed to pass the following,

ORDER

I.A.No.II filed by the Appellant
under Order 3 Rule 2 R/w. Section 151
of CPC is hereby allowed.

No order as to costs.

The Appellant is hereby permitted
to file the present appeal on her behalf
through her General Power of Attorney
Holder.

(INDIRA MAILSWAMY CHETTIYAR)

I Addl. Senior Civil Judge & CJM.,
Dharwad.

ORDERS ON I.A.NO.I

The Appellant has filed I.A.No.I under Order 41 Rule 5 R/w. Section 151 of CPC praying to stay the execution and operation of the Order dated 11.11.2020 passed by the Hon'ble III Addl. Civil Judge, Dharwad, in O.S.No.281/2009, till the disposal of this appeal.

2. The General Power of Attorney Holder of the Appellant has sworn an affidavit annexed to this application.

3. The Respondent No.4 has filed objections to this application.

4. In support of the application, the Learned Counsel appearing for the Appellant has placed reliance upon the decision reported in **(2005) 1 Supreme Court Cases 705 (Atma Ram Properties (P) Ltd. V/s. Federal Motors (P) Ltd.)**.

5. I have gone through the contents of affidavit, objections, records and the principles enunciated in the decision.

6. The Appellant through her General Power of Attorney Holder, has filed the present appeal as against the Respondents No.1 to 15 under Order 41 Rule 1 R/w. Section 96 of CPC praying to set-aside the Judgment and Decree dated 11.11.2020 passed by the Hon'ble III Addl. Civil Judge, Dharwad, in O.S.No.281/2009. On perusal of the records, it appears that, the Appellant has filed the said suit in O.S.No.281/2009 as against the Defendants No.1 to 9(a) to (g) seeking the relief of specific performance of contract in respect of the immovable suit schedule properties passed on the agreement of sale dated 08.01.1993 and the Trial Court has dismissed the said suit on merits on 11.11.2020. By filing objections to this application, the Respondent No.4 has seriously objected to this application, by contending that, the Trial Court has not at all passed any executable decree and based on the created false document, the Appellant has filed the said suit and the Respondents No.4 to 7 are in possession of the suit schedule properties and the Appellant intend to get the stay of the Trial Court Judgment from this Hon'ble Court for trying to

dispossess the Respondents No.4 to 7 from the suit schedule properties. But, based on the said ground urged by the Respondent No.4 in the objections, the present application filed by the Appellant cannot be rejected and it cannot be stayed at this interim stage that, the present appeal preferred by the Appellant as well as the present application are not maintainable, as, the merits of the case cannot be considered at this interim stage and since the suit filed by the Appellant is dismissed by the Hon'ble Trial Court on 11.11.2020, which is filed for specific performance of contract, she has every right to prefer an appeal as against the impugned Judgment and Decree dated 11.11.2020. further, at this interim stage, the possession of the suit schedule properties either by the Appellant or by the Respondents No.4 to 7 as contended by them respectively cannot be adjudicated. In view of the said reasons, this Court has come to the conclusion that, it is just, proper and necessary to stay the execution and operation of the Judgment and Decree dated 11.11.2020 passed by the Hon'ble III Addl. Civil Judge, Dharwad, in O.S.No.281/2009, till the dismissal of this appeal. If the stay is granted, no prejudice or injustice will be caused to the Respondent No.4, as, the present appeal preferred by the Appellant will be disposed off on merits by considering all the material facts, evidence

and law. Therefore, the present application filed by the Appellant is required to be allowed. In view of the said reasons, the principles enunciated in the decision cited by the Learned Counsel appearing for the Plaintiff are applicable to the present facts and circumstances of the case on hand. Accordingly, I proceed to pass the following,

ORDER

I.A.No.I filed by the Appellant under Order 41 Rule 5 R/w. Section 151 of CPC is hereby allowed.

The execution and operation of the Judgment and Decree dated 11.11.2020 passed by the Hon'ble III Addl. Civil Judge, Dharwad in O.S.No.281/2009, is hereby stayed till the disposal of this appeal.

No order as to costs.

Issue notice on main appeal and I.A.No.I and II to the Respondents No.1 to 3 and 5 to 15 and office to call for LCR.

R.A.No.52/2020

Returnable by: 08.01.2021.

(INDIRA MAILSWAMY CHETTIYAR)

I Addl. Senior Civil Judge & CJM.,
Dharwad.