

Date: 30.09.2023

Applt: ABB

For Orders on I.A.II

**INTERIM ORDER ON I.A.NO.II UNDER
ORDER XLI RULE 5 READ WITH
SECTION 151 OF CIVIL PROCEDURE
CODE**

The appellant has filed I.A.No.II under Order XLI Rule 5 read with Section 151 of Civil Procedure Code praying this court to stay the operation and execution of the judgment and decree passed by learned Prl. Civil Judge and JMFC., Channapatna in O.S.No.137/2020 dated 24.11.2022, till disposal of this appeal.

2. Perused the Judgment passed by the Trial Court and also grounds of appeal in the present appeal. The said judgment passed by the Trial Court is challenged in this appeal. The perusal of the Judgment shows that the above Appellant/Defendant even though appeared before the Trial Court through his counsel, not filed written statement and not contested the suit. Therefore, considering the evidence adduced by the Plaintiffs, suit of the Plaintiffs was decreed by the Trial Court. The Appellant has submitted that, he is innocent and illiterate, as such he could not contest the

suit and he came to know about the judgment and decree when the court Ameen visited the suit schedule property. The Appellant has submitted that the Respondents/Plaintiffs have filed Ex.No.05/2023 to vacate the house situated in the suit schedule property. The Appellant has further submitted that the Trial Court has ordered for issuance of delivery warrant against him and police protection was also provided. If the said decree is executed by way of delivery of decree schedule property the very purpose of filing of this appeal will be made as infructuous. Hence, prayed to stay the judgment and decree passed by the Trial Court.

3. In this case, the Appellant has furnished the copy of the Order Sheet in Ex.No.5/2022, which goes to show that the Trial Court has ordered for issuance of delivery warrant against him and police protection was also provided. I am of the opinion that, if the said decree is executed by way of delivery of decree schedule property to the Decree Holder, the very purpose of filing of this appeal will be made as infructuous. The appellant has got a right of appeal as against the judgment and decree of the trial court. Therefore the

judgment and decree of the trial court has to be stayed till the disposal of this appeal on merits. Hence, I proceed to pass the following:

ORDER

The I.A.No.II filed on behalf of the appellants under Order XLI Rule 5 read with Section 151 of Civil Procedure Code is hereby allowed.

The operation and execution of the judgment and decree passed by the Trial Court in O.S.No.137/2020 dated 24.11.2022 is hereby stayed till the disposal of this appeal on merits.

Call on hearing date i.e., on **20.11.2023.**

(SHUBHA)
**Senior Civil Judge & JMFC,
Channapatna.**