

ORDER BELOW EXH.34 in M.C.A. No.104/2013

1] Perused the application and the say filed at Exh.36 by the main applicants. Heard both the Ld. Counsels at length. Gone through the record and proceeding.

2] This is an application by the opponent No.1 for stay to the further proceeding of the main application till the decision of his Second Appeal No.233/2007 which is pending before the Hon'ble Bombay High Court Bench at Aurangabad which is filed against the judgments and decrees passed by this court and which is confirmed by the First Appellate i.e. Ad-hoc District Judge-1 at Majalgaon in RCA No.110/2004. The applicants have admitted that the Second Appeal is pending before the Hon'ble High Court Bench at Aurangabad. However, the bonafides of this application has been challenged by the main applicants.

3] The main application is filed under O.20 R.12 (c) of the Civil Procedure Code for the fixation of the mense profit gained by the respondents, as per the decree passed against the present applicant who is respondent No.1 in main application. The main application is of year 2013. After receipt of notice of the main application. the present applicant failed to file his written-say though sufficient time was granted to him. However, later-on he filed his written say with an application with prayer to set aside the orders of "No Say hearing" passed against him and to accept his written-say. Accordingly the application was allowed and the "No Say" orders passed against the present applicant came to be set aside. Thereafter the Ori. applicant No.8 filed her evidence of chief-examination on affidavit on dt.20-6-2015 vide Exh.31. Thereafter the matter was adjourn for cross-examination of the applicant's witness No.1. After that on dt.17-8-2015 the present applicant filed an application seeking an adjournment for the cross-examination. Thereafter one date was passed and on next date i.e. on dt.19-9-2015 the present application came to be filed. All these conduct of the opponent No.1 i.e. present applicant did prove that for one or the other reason he has tried to prolong the matter. If really he was honest to proceed with this application, then at the first appearance itself he could have filed the present application to stay the further proceeding in this application till the decision of Second Appeal. Here it is worth to mention that the Second Appeal is of year 2007. However, till this date the present

opponent No.1 have not sought the stay orders for the execution of the judgment and decree passed in Special Civil Suit No.24/1985. Even the present applicant failed to file such an application at the earliest time when he firstly appeared in this proceeding or even when he filed his written-say to main application. Even in his written-say filed at Exh.28 he has not made a cursory prayer to stay the further proceeding in the present application till the decision of the Second Appeal. Otherwise also the main applicants have received the possession of the suit property in the execution proceeding filed by them. At that stage also the present applicant had not sought the relief of Stay which he is now seeking in this proceeding.

4] The filing of this application after filing the affidavit of chief-examination by the applicant No.8 in support of her main application, did prove that the present opponent No.1 is trying to delay the present proceeding and therefore there is no bonafide intention appearing in preferring this application. Merely because the applicants have withdrawn the execution petition which was filed for recovery of the suit property itself is not ground to come to the conclusion that the present applicants are not serious to proceed with this main petition.

5] For the reasons discussed above this Court come to the conclusion that the present application is filed with ill motive only to prolong the hearing of this petition. Even otherwise also the main application is for the fixation of the mense profit and therefore if the application is decided, no harm or prejudice will cause to the present applicant since he can challenge. As such there is no legal merit in this application and therefore same deserves to be dismissed with costs. Hence the following order.

:: O R D E R ::

The application stands dismissed with costs.

Majalgaon.
Dt.16-12-2015

Sd/-
[S. R. Fakir]
Civil Judge Senior Division,
Majalgaon.