

ORDER BELOW EXH.42 in M.C.A. No.104/2013

1] Perused the application and the say filed on it and as well as 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. 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. Thereafter the present application has been filed to stay the further proceeding in this application till the decision of the Second Appeal. It is the submission of the present applicants that if the main petition is decided it may in conflict with the decision of the Second Appeal if it is allowed which is admitted only on three law points. The Ld. Counsel for the present applicants vehemently and repeatedly submitted that by the consent of both the Ld. Counsels before the Hon'ble High Court Bench at Aurangabad in the Second Appeal, the Second Appeal has been admitted on three law points. The first one is whether the agreement dt.10-8-1977 and 24-12-1979 among to lisenche, lease or any other type of agreement? The second point is whether the appellants/ defendants are entitled to protection of their possession? The Ld. Counsel for the main petitioners admitted this fact. However, it is his submission that since filing of this petition by his clients, the opponents never tried to get stay orders for further proceeding in this Misc.

Application till this date. Even the possession of the suit property has already been handed over to the main petitioners which has been admitted by the Ld. Counsel for the present opponents. In view of these developments the Ld. Counsel for the main petitioners submitted that the present main petition is only for deciding the quantum of the mense profit and if the same is decided no prejudice or loss will cause to the opponents. Admittedly the present application is only for deciding as to the quantum of the mense profit. If in this proceeding the mense profit is decided, no harm or prejudice will certainly cause to the respondents since immediately there will be no execution of the said orders. Moreso, the opponents have not sought the stay orders for further proceeding in this petition if their application is bonafide, till this date.

4] Here it is also worth to mention that the present opponent had filed an application at Exh.32 for the same relief on the same grounds. The application was decided on merit by this Court on dt.16-12-2015 and the application for stay to the further proceeding has been rejected. However, the order has not been challenged at all before the Hon'ble Appellate Authority by the opponents till this date. As such the orders passed below Exh.32 became final since it has not been challenged at all. This order itself is binding on the opponents and therefore the opponents are not allowed to re-agitate the same question by such similar application, since the order below Exh.32 operates as Resjudicata as per Sec.11 of the C. P. C. On this score itself the present application is not maintainable in the eyes of law. Therefore it is not necessary to go into details of merits or demerits of this application.

Hence the following order.

:: O R D E R ::

The application stands dismissed.

Majalgaon.
Dt.18-4-2016

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