

COMMON ORDER BELOW EXH.39 & 47 in MCA No.104/2013

1] These two application are filed by the opponent No.1 for common prayer that till the decision of the Second Appeal No.233/2007 pending before Hon'ble High Court Bench At Aurangabad, the inquiry in this petition be stayed. It is contended that the opponent No.1 have filed the Second Appeal which is subjudice before the Hon'ble High Court. During its subsistence, if the present application is heard and decided, then they will suffer irreparable loss which cannot be compensated in terms of money. No hard or prejudice will cause to the applicants if the matter is stayed till the decision of the Second Appeal.

2] The applicants by filing their say at Exhs.41, 51 & 52 and strongly resisted the application contending that already the applications for similar reliefs filed at Exhs.34 & 42 have been decided and disposed off by this Court on merit. But, the opponent have not challenged it and hence the orders became final. Therefore, now the opponent No.1 cannot again sought the same relief which has already been rejected on merit. The opponent No.1 have not brought any stay orders from the Hon'ble High Court Bench at Aurangabad for further proceeding in this petition. The petition is of year 2013 and hence this application be dismissed.

3] Heard both the Ld. Counsels at length and also gone through the record and proceeding.

4] It is the admitted fact the present application is for fixation of the mense profit under O.20 R.12(c) of C. P. C. It is also an admitted fact that there is Second Appeal pending before Hon'ble High Court Bench at Aurangabad which is filed by the present opponent No.1. It is also

the admitted fact that after filing of the affidavit of chief-examination by the applicant No.8 Meera at Exh.31 on 20/06/2015 the present opponent No.1 had filed an application at Exh.34 seeking the stay for further proceeding in this petition. The application has been decided on merit by this Court and on 16/12/2015 the same has been dismissed. Irrespective of the dismissal of that application again the present opponent No.1 filed similar application at Exh.42 on 17/03/2016. The said application also came to be dismissed on merit on 18/04/2016. Whereas the application at Exh.39 is filed by the opponent No.1 on 08/03/2016 and the application at Exh.47 has been filed on 19/07/2016. In Exh.39 it is prayed that in view of the pendency of the Second Appeal and the application at Exh.34 the evidence of the applicants should not be recorded by this Court. In Exh.47 it has been prayed that the decision of Exh.39 be passed considering the reasons stated in the application Exh.47. It is to be noted that the application at Exh.39 is filed after passing of the orders below Exh.34 for the same relief. Therefore, now both these applications are not at all tenable in the eyes of law.

5] If the opponent No.1 is due diligent and if his bonafide intention is to wait till the decision of the Second Appeal, then on the date of first appearance only he would have filed the applications for stay in the proceeding till the decision of the Second Appeal. Even on dismissal of the applications at Exh.34 he would have immediately filed revision before the Appellate Court and would have sought stay to the further proceeding in this application. Even he would have sought the stay orders to this proceeding from Hon'ble High Court Bench at Aurangabad in that Second Appeal. But, without taking such legal steps

the opponent No.1 is filing applications on various dates for same reliefs which has already been dismissed on merit. This shows that the opponent No.1 is anyhow trying to prolong the proceeding without taking proper remedy.

For the reasons discussed above there is no legal merit in either of the application and therefore, the same deserves to be dismissed with directions that on the next date if the opponent No.1 fails to proceed to record the cross-examination of witness No.1 of the applicants, necessary orders of No cross will be passed and the matter will be proceed further. With these observations the following order.

:: ORDER ::

The applications at Exhs.39 & 47 stands dismissed.

Majalgaon
Dt.09-02-2017

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