

**ORDER ON APPLICATION BELOW EXHIBIT NO.121 IN****R.C.S. NO. 167/2004**

1. This is an application for adjournment by plaintiffs.
2. It is contended that in respect of this suit plaintiffs have filed Writ Petition in the Hon'ble High Court Bench at Aurangabad bearing No. 9647/2014. The Hon'ble High Courts working has started after vacation. Therefore one months time be granted to the plaintiffs in the suit.
3. Defendants have filed their say on the back side of same page. They have contended that suit is 10 years old. Plaintiffs have not filed any certified copy of Writ Petition in the Hon'ble High Court. Application does not bears signature of plaintiffs. It does not include their verification. Name of advocate who has instituted Writ Petition and their letter is not filed. Mere filing of Writ Petition does not operate as a stay. They relied upon judgment of the Hon'ble Supreme Court in the case of **Madan Kumar Singh (Dead) Through LRS Versus District Magistrate, Sultanpur and others reported in 2010(1)B C J 567(SC)** in which it is held that,

“20. It is trite to say that mere filing of a Petition, Appeal or

Suit, would by itself not operate as stay until specific prayer in this regard is made and orders thereon are passed.”

Prayed for rejection of application.

4. Heard learned advocate Shri. S.D. Kulkarni for defendants. He submitted as per his contentions. Learned advocate for plaintiffs was absent.

5. In this matter plaintiffs have contended that they have filed Writ Petition in the Hon'ble High Court. Its number is mentioned but no other documents are filed on record. It is necessary to mention that specific number of Writ Petition has been mentioned in the application. Hence though application is not verified by plaintiffs or it does not supported by other documents it cannot be said that such Writ Petition is not filed in the Hon'ble High Court.

6. It is very clear from the judgment of Hon'ble Supreme Court in the case of Madan Kumar (supra) that mere filing of appeal does not operate as a stay.

7. It is necessary to mention that Hon'ble High Court was pleased to guide in the judgment of Vishwanath P.

Mahadeshwar Vs. Suryawanshi Balrup Thakur and Ors. in Writ Petition No. 9411 of 2010 that, what should be the proper course when appeal is filed in the Hon'ble High Court in respect of any order by the Civil Court in following words.

“9. However, it has come to notice that in several matters, the Petitions are filed before this Court challenging the interlocutory orders passed in the suits or other proceedings and after the Petitions are filed, by pointing out stamp number and even without circulating the matter before this Court, adjournments are sought before the lower courts by pointing out to them my aforesaid judgment in Kishor Rajput's case, it is urged that since the matter is pending before this High Court, the trial Court should not proceed further with the matter. I am at pains to say that the aforesaid judgment in Kishor Rajput's case is being used as a tool to protract the proceedings by the litigants not interested to proceed with the matters before the lower courts. No doubt that if the order of the subordinate court is challenged before this Court and the subordinate court is informed about the pendency of the matter before this Court, it would be expected of the trial Court to stay its hands away for a period of a week or two, so as to enable the parties to get circulation before this

Court and obtain appropriate orders. However, merely by filing the proceedings before this Court, the proceedings before the lower courts cannot be permitted to be protracted for months together at the interest of the litigants who neither circulate the matters before this Court nor get the interim order staying the proceedings. ”

8. Considering the above judgment of the Hon'ble High Court, it is clear that in the current situations the Court has to grant one or two weeks time to the parties to file necessary order. In fact already more than sufficient opportunity is given to the plaintiffs but again in the interest of justice two weeks time is granted to plaintiffs to file specific order otherwise necessary order will be passed in the suit.

Sd/-

(S.S.Deshmukh)

3<sup>rd</sup> Joint Civil Judge (J.D.)

Georai.

Date:- 13-06-2014

Place:- Georai.

