

MHBU040003112022



Order Below Exh.15
(Passed on 19.10.2023)

This is an application filed by the appellant/original defendant seeking stay order to the execution of judgment and decree dated 24.9.2021 passed in Reg.Civil Suit No.149/2011 by the 3rd Joint Civil Judge Junior Division, Khamgaon.

2. The application has been resisted by the respondent/original plaintiff by filing say at Exh.17. It is contended that appellant/original defendant is defaulter. Rs.2,60,000/- rent is due from appellant for the period 1.9.2011 to 30.4.2022 and only after depositing the same amount, stay application may be entertained. Hence, requested to reject the application.

3. Heard Shri N.A.Bathe, advocate for the appellant. He submitted that appellant is tenant and respondent is landlord of the suit property. The trial court has passed the decree of eviction and therefore, if the execution of impugned judgment and decree is not stayed then the purpose of filing the appeal will be frustrated. He submitted that appellant has every hope to succeed in the appeal. Hence, he urged to pass the stay order as per prayer.

4. On the other hand, Mr. M.B. Phirke, advocate for respondent/original plaintiff has submitted that Rs.2,60,000/- rent is outstanding. He further submitted that if appellant deposits the outstanding amount then he has no objection to grant stay order. He further submitted that the hearing of appellant may be expedited.

5. I have considered the submissions of both side. Perused the application, say, impugned judgment of trial court and record and proceeding.

6. The record shows that the respondent/original plaintiff had filed suit i.e. RCS No.149/2011 for eviction, recovery of possession and arrears of rent along with compensation before the 3rd Jt.Civil Judge Jr. Dn. Khamgaon. It was partly decreed on 24.9.2021. Trial court has directed defendant to deliver vacant possession of the suit property within two months from the date of order. Further defendant was directed to pay an amount of Rs.24,000/- towards the arrears of rent along with interest 6% per annum from the date of filing of the suit till its realization. Further the defendant was directed to pay an amount of Rs.2000/- as compensation to the plaintiff.

7. The record shows that the appellant vide Exh.7 has deposited Rs.24,000/- towards arrears of rent amount and interest from 8.9.2011 to 28.2.2022 total Rs.15,000/- and compensation amount Rs.2000/- total Rs.41,000/- in this Court on 4.3.2022. It appears that appellant/original defendant has deposited rent amount from

01.09.2011 to 30.06.2022 along with interest and compensation of Rs.2000/-. It shows that since 01.09.2011 rent is due from the appellant. From 01.09.2011 till 30.06.2022 there are 130 months and by multiplying of Rs.2000/- it comes arrears of rent Rs.2,60,000/-.It will take more time to decide the appeal. In such circumstances, if stay order is not granted then the appellant/defendant will be dispossessed from suit property and the purpose of filing the appeal will be frustrated. Therefore, it is necessary to stay the execution and operation of impugned judgment and decree on certain terms and condition. At the same time it is necessary to consider that respondent / original plaintiff should not be suffer financially. Hence, I pass the following order :-

ORDER

- 1] Application Exh.15 is hereby allowed.
- 2] The effect and operation to the execution of judgment and decree dated 24.9.2021 passed in Reg.Civil Suit No.149/2011 by the 3rd Joint Civil Judge Junior Division, Khamgaon is hereby stayed till decision of main appeal or till one year from this order, whichever is sooner on following conditions :-
 - [i] Appellant/original defendant shall deposit arrears of rent amount Rs.2,60,000/- (Two lac sixty thousand only) within six weeks in this Court payable to the respondent.
 - [ii] He shall deposit the rent amount of Rs.2000/- (Rs. Two thousand only) per month from July-2022 till October-2023 and continue to deposit Rs.2000/- (Rs. Two thousand only) per month from November-2023 on or before 15th day of each month till decision of appeal.

- [iii] On failure to compliance of this order by appellant, the stay order automatically stands vacated.
- 3] Inform the order to the trial/executing court accordingly.

Dt.19/10/2023

(G.B.Jadhav)
District Judge-1, Khamgaon,
Dsit.Buldhana.

Certificate

I affirm that the contents of this P.D.F. file order are same word for word as per original order.

Name of Steno : Mrs.Nishat Anjum Mohd.Rafique.

Name of Court : District Judge – 1, Khamgaon, Dist. Buldana.