

MHBU040003812024



Order below Exh.5
(Passed on 17.8.2024)

This is an application under order 41 rule 5 r/w Sec.151 of the Civil Procedure Code filed by the appellants/original defendants, seeking stay order to the execution of judgment and decree dated 21.1.2022 passed in Reg.Civil Suit No.42/2012 by 2nd Jt.Civil Judge Junior Division Khamgaon.

2. The application has been resisted by the respondent by filing say at Exh.10. He admitted about the filing of execution application. But denied that the purpose of filing of the appeal is likely to be frustrated in case execution matter is proceeded further. The trial court has rightly passed the decree of specific performance of contract in his favour. The appeal is devoid of merits. The appellants does not come before the Court with clean hand. Therefore, they do not deserve grant of equitable relief of stay of execution of decree. It is submitted that appellants have not complied with the mandatory requirements of law for grant of stay. They have not deposited the amount of cost of appeal nor furnished solvent surety for due purpose of the decree passed against them. Hence, requested to reject the application with costs and requested for final hearing of main appeal.

3. Mr.Z.B.Shaikh learned advocate for the appellants has submitted that if the stay order is not granted to the execution of decree of trial court then ,the purpose of filing the appeal will be frustrated because respondent will try for execution of decree of sale deed and a valuable rights of the appellants have been involved in the suit property. He submitted that appellants have every hope to success in appeal. He submitted that appellants are ready to deposit the cost of decree as per judgment and decree. Hence, he urged to grant the stay to the execution of decree of the trial court till decision of the main appeal.

4. On the other hand, Mr.S.V.Agrawal, learned advocate for the respondent has submitted that the learned trial after considering the evidence adduced by both the parties on record has passed the proper judgment and decree. Therefore, there is no need to grant the application. He submitted that if stay is granted then the execution proceeding will be delayed and respondent will deprive the fruits of decree. He further submitted that appellants have not deposited the security before this Court. Hence, he requested to reject the application.

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

6. The record shows that respondent/original plaintiff has filed the suit for specific performance of contract, possession with ancillary reliefs in respect of Nazul Sheet No.31-C, Plot No.1/21-D-50(1)/1-B-50 admeasuring area as per Namuna D 291.44 Sq.meter (3135.90 Sq. feet) and as per sale deed admeasuring total area 286.08 Sq. meter (3078.25 Sq.feet) out of land Survey No.11, wherein two rooms have constructed, basement of two rooms with other things situated at Khamgaon which is referred as the suit house. According to plaintiff suit house was owned and possessed by the defendant. The plaintiff was in need of house and the defendant was also intend to sell out the house. Therefore, he gave proposal to sell his house and plaintiff accepted the same. Accordingly, defendants executed the agreement to sale and agreed to execute registered sale deed of suit house for consideration of Rs.3,30,000/-. The plaintiff has paid earnest amount of Rs.1,00,000/- to the defendants. The defendants agreed to execute sale deed on 30.5.2008. But defendant was unable to hand over the vacant possession of the suit house to the plaintiff. Hence, defendants requested to the plaintiff seeking time for the same purpose till 30.8.2008. Hence, defendants executed another agreement to sell on 30.5.2008 in favour of plaintiff by extending time thereof. Said document was notarized. It was agreed that defendants will execute register sale deed till 30.8.2008 by accepting balance consideration Rs.2,30,000/-. Plaintiff requested defendants to perform his part of contract and he drawn pay order of Rs.2,30,000/-. He asked defendants to remain present for execution of registered sale deed on 29.8.2008 or 1.9.2008. But defendant did not remain present.

However, defendant sent notice to the plaintiff to avoid the registration of sale deed. Therefore, plaintiff filed suit for specific performance of contract.

7. Defendant has resisted the suit by filing his written statement. It is the contentions of defendant that he was in need of money therefore, he obtained Rs.1,00,000/- from plaintiff. But defendant got executed agreement to sell in his favour. He repaid Rs.55,000/- on 30.5.2008 to the plaintiff. But at that time plaintiff got executed other agreement to sale on 30.5.2008 from the defendant. It is contended that defendant also repaid remaining amount of Rs.50,000/- along with interest of Rs.5000/- on 18.8.2008. Thus, he repaid the entire amount to the plaintiff. However, the plaintiff has filed false suit against him.

8. The trial court after considering the evidence of both side and hearing them, has partly decreed the suit with cost and directed the LR's of the defendant to execute registered sale deed in respect of the suit house in favour of the plaintiff within two months. Further plaintiff was directed to pay balance consideration amount of RS.2,30,000/- to the LR's of the defendant at the time of execution of the sale deed.

9. By this appeal the legal representatives of original defendant have challenged the impugned judgment and decree. There are legal as well as factual points are involved in this matter. This Court being

first appellate court is last facts finding court. It will take more time to decide the main appeal. In such circumstances if the execution of judgment and decree is not stayed then the purpose of filing the appeal will be frustrated. Therefore, though the respondent has resisted the application but on imposing certain conditions if the stay is granted then the respondent will not be prejudiced. Hence, application deserves to be allowed. In result, I pass the following order-

ORDER

- 1] Application Exh.5 is allowed.
- 2] The effect and operation to the execution of judgment and decree dated 21.1.2022 passed in Reg.Civil Suit No.42/2012 by the 2nd Jt.Civil Judge Junior Division Khamgaon is hereby stayed till decision of the main appeal or until one year whichever is sooner from the date of this order on following conditions :-
 - [a] The appellants shall pay or deposit decretal amount in this Court within two weeks from the date of this order.
 - [b] On failure the compliance of this order by appellants, the stay order automatically stand vacated.
- 3] Both parties shall co-operate to decide the appeal within one year from the date of this order.
- 4] Inform the order to the trial court/executing Court.

Dt.17/8/2024

(G.B.Jadhav)
District Judge, Khamgaon,
Dist.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.Buldhana.