

MHBU040011042023



Reg.Civil Appeal No.37/2023

Sanj Dainik Lokopchar

Through-Kishor Ruparel

Vs

Gokulchand Sananda

Order below Exh.05

01. Being aggrieved and dissatisfied with the impugned judgment and decree in Special Civil Suit No.17/2013 dated 30.06.2023 passed by the Learned Civil Judge Senior Division, Khamgaon, the appellants/ original defendants have preferred this appeal. The Learned Trial Court has decreed the suit filed by the respondent. The defendants were directed to pay jointly and severally an amount of Rs.25,00,000/- to the plaintiff towards compensation within the period of 03 months from the date of decree. Further, defendants perpetually restrained from publishing any defamatory articles against the plaintiff and his family members.

02. In this appeal, appellants have filed present application under Order 41 Rule 5 of the Code of Civil Procedure to stay the effect, operation and execution of the decree passed by the Civil Judge Senior Division, Khamgaon on 30.06.2023 in Special Civil Suit No.17/2013 till decision of the appeal.

03. Respondent/original plaintiff has resisted has resisted the application

by filing say at Exh.11. It is contended that, till passing the decree 10 years period elapsed and during said period, appellants/original defendants have delayed the proceeding by filing different applications and writ petitions before the Higher Court. He submitted that due to it, respondent/original plaintiff was harassed. It is contended that being the money decree no stay can be granted to the appellants without depositing the entire amount in the Court. Further, it is contended that there are no grounds to grant the stay. Moreover, respondent is 90 years old and still awaiting the fruits of decree, hence, requested to reject the application.

04. Mr. P. R. Joshi, Learned Advocate for the appellants has submitted that, this Court is last fact findings Court. Appellants have chance of success in appeal and if the impugned judgment and decree is not stayed, then the purpose of filing the appeal will be frustrated. He submitted that appellants have no sound economical condition to deposit the entire decretal amount. Further, they are ready to deposit 25% decretal amount if stay is granted. He submitted that, appellants are ready to furnish bank guarantee and solvent surety regarding decretal amount. Hence, he urged to allow the application. He relied upon the following authority:-

Lifestyle Equities C. V & Anr Vs Amazon Technologies INC, [2025] 10 S.C.R. 463: 2025 INSC 1190 in which the Hon'ble Supreme Court observed that, Although Order 41 Rule 5 of the Code of Civil Procedure uses the word "shall" yet a combined reading of the sum and substance of rule, for the purpose of the grant or refusal of stay of execution of the decree under Rule 5 Order XLI, it is immaterial whether the decree is a money decree or any other decree. Order XLI Rule 5 makes no distinction between a money decree and other decrees, and the said provision applies

with full rigour in both instances. Further, there is no provision under Order XLI Rule 5 imposing a mandate to deposit cash security as the only mode of security for execution of the decree. Security, for the purpose of the said provision, can be in the shape of property, bond and or in the form of an appropriate undertaking from the appellant to abide by the decree, seeking stay of execution.

05. On the other hand, Mr. S. T. Joshi, Learned Advocate for the respondent/original plaintiff has submitted that, appellants are not entitled for stay because they have harassed not only to the plaintiff but also Presiding Officer of the Trial Court till passing the decree in the suit which takes 10 years after filing the suit. He further submitted that, inspite of directions of the Hon'ble Supreme Court to decide the suit within the stipulated time, appellants/original defendants have delayed the proceeding by adopting different modes, therefore, they are not entitled for stay. He has argued in length in the line of reply. He submitted that the authority cited supra by the appellants is not applicable because facts are different. He further submitted that, respondent is ready for final hearing. He further submitted that if this Court has granted stay to the execution of decree, then appellants may be directed to deposit entire decretal amount. He submitted that if appellants have deposited entire decretal amount and he succeed in appeal, then he will get the amount back, hence, he urged to reject the application.

06. I have respect to the observation of the Hon'ble Supreme Court in the case cited (supra) by the appellants but it is not helpful to them because facts are different .In the cited case the plaintiff has instituted civil suit

before the Delhi High Court seeking permanent injunction and damages against the defendant for the alleged infringement of their registered trademark BHPC. The plaintiffs instituted the suit contending that defendant has been unlawfully using a mark identically or deceptively similar to the plaintiffs' trademark, thereby violating their statutory and common law rights. The plaintiffs have claimed damages of Rs. 2,00,05,000/- or any such amount as the Court would find it to be payable. The suit came to be decreed in favour of plaintiffs against the defendant No.1. The decree of damages to the tune of 38.78 million as on dated Rs.336,02,87,000.00 is granted in favour of the plaintiffs against defendant No.1 and said amount was to pay within three months. On failure to pay @ 5% per annum interest . On the other hand, in the present case, respondent has filed the suit for damages of Rs.25,00,000/- towards compensation for the per se for defamatory publication against defendants jointly and permanent mandatory injunction from publishing news item against the plaintiff and his family members of any kind being defamatory and malicious. The trial Court has decreed the suit and directed the defendants to pay Rs.25,00,000/- and restrained from publishing any defamatory articles against the plaintiff and his family members.

07. Admittedly, respondent/original plaintiff is a 90 years old. The suit has been decreed after 10 years and he should get the fruits of decree but at the same time it is necessary to consider that this Court being first appellate Court is last fact findings Court. Therefore, it is necessary to re-appreciate the evidence adduced before the trial Court, it will take more time to decide the appeal. It has come on record that, the attachment warrant regarding movable property of the appellants has been issued by

the executing Court. In such circumstances, the execution of the impugned judgment and decree is not stayed, then certainly appellants will sustained substantial loss. Therefore, considering the submission of both sides, if the stay order is granted on certain conditions, then the both parties will not be prejudiced. Hence, to meet the ends of justice, I pass the following order :-

ORDER

- (1) The application Exh.5 is hereby allowed.
- (2) The execution of Judgment and decree in Special Civil Suit No.17/2013 dated 30.06.2023 passed by the Civil Judge Senior Division, Khamgaon is hereby stayed to the extent of recovery of amount till decision of the main appeal or till four months which ever is sooner subject to condition that appellants shall deposit 40% decretal amount in the Court within Six weeks.
- (3) On failure to comply, this order shall be automatically cancelled.
- (4) Both parties to co-operate for disposal of the appeal expedite
- (5) Informed the order to the executing Court.
- (6) Costs in cause.

Date : 24.04.2026
Place: Khamgaon.

(G. B. Jadhav)
District Judge-2, Khamgaon