

MHKO010020992023



**Reg.Civil Appeal No.85/2023**  
**Order below Exh.18**

The instant Reg.Civil Appeal is filed against the judgment and decree dated 19-07-2022, passed in Reg.Civil Suit No.70/2020. By way of this judgment and decree the learned Trial Court decreed the suit for specific performance of contract in respect of the suit property, described in the plaint.

02. The defendant is aggrieved by the same and preferred the instant appeal. In this appeal this application is filed for stay to the execution and operation of the judgment and decree.

03. The application is opposed by the respondent. It is case of the respondent that on 15-6-2023 the appellant has obtained injunction against the respondent, restraining him from creating third party interest in respect of the suit property. Again relief of stay to the execution and operation of the judgment and decree is not warranted.

04. Heard both the parties.

05. Whether the appellant has prima facie case, balance of convenience lies in his favour and if the injunction is refused, whether he will suffer irreparable loss ?, are the only points for consideration. I have answered them for the following reasons.

06. A perusal of judgment of the learned Trial Court shows that the appellant i.e. the defendant was served by paper publication at Exh.16. On the basis of the same ex-parte order was passed

against the appellant/defendant on 16-03-2021. The ex-parte order was passed against the appellant/defendant during the covid pandemic. Whether or not the paper proclamation summons was duly noticed by the appellant/defendant during the covid pandemic will have to be decided during the hearing of the appeal on merit. One of the grounds raised by the appellant/defendant that he was not duly served and ex-parte order was obtained hurriedly. This ground will have to be considered during the hearing of the appeal. It will certainly require considerable time. If without considering the grounds raised in the appeal memo the decree is executed, the purpose behind filing the appeal would frustrate. This is sufficient to infer prima facie case in favour of appellant/defendant. If the decree is executed the defendant will suffer irreparable loss and will lead to multiplicity of litigation. Balance of convenience also lies in his favour because the suit is decreed against him without any defence placed on his behalf before the Trial Court. Thus, all the formulated points answered accordingly. In the result, following order is passed

**Order**

1. The application is allowed
2. Execution and operation of the judgment and decree in Reg.Civil Suit No.70/2020, passed on 19-07-2022, are stayed till final disposal of the appeal.
3. No order as to costs.
4. The order be communicated to the learned Trial Court.

Date : 17/03/2026

(D. V. Kashyap)  
District Judge- 3, Kolhapur.