


MHKO010025752022 	<p style="text-align: center;"><u>Order below Exh.22 in Reg.Civil Appeal No.119/2022</u></p> <p style="text-align: center;">Prathamesh Tea Stall, Proprietor – Smt.Sunita Bapuso Patil</p> <p style="text-align: center;"><i>Versus</i></p> <p style="text-align: center;">1) Dean Chatrapati Pramilaraji Medical Hospital, Kolhapur.</p>
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- 1) The appellant has filed present application for grant of Stay.
- 2) The appellant contended that the appellant had filed stay application Exh.5, which was decided on 03/08/2022 by this Court on condition that I) the execution of order passed in Eviction Case No.4/2021, dated 20/06/2022 by respondent No.2 is stayed for the period of 4 (Four) weeks and II) The appellant to argue the appeal (final hearing) within three weeks, failing which the stay order granted by this Court stands vacated automatically.
- 3) As the appellant failed to comply with the condition, the stay vacated after the period of one month. The defendant/respondent on 31/12/2024 have clearly declared their intention and action in the Daily newspaper “Lokmat” to evict the tea stall of the appellant. As per the contention of the appellant, the Tea stall is the bread and butter of the appellant and his family along with his old parent’s expenses are met with the income of the said Tea stall. The defendants/respondents once again have acted beyond their power and shown their intensity to evict the Tea Stall.
- 4) Being highly aggrieved and dissatisfied by the action and intention of the respondents/defendants, the appellant filed present stay application on the following grounds :-

The respondent/defendant on 31/12/2024, have clearly declared their intention in Daily newspaper “Lokmat” to evict the Tea stall of

the appellant. The respondent/defendant at any time can evict the appellant from their premises without giving any prior notice. The Ld.Trial Court is an administrative authority, who is totally biased against the appellant just because administration wanted to vacate the suit property . So that the Ld.Trial Court i.e. Resident Deputy Collector not considered any of the evidence, which was in favour of the appellant. The appellant is having Tea stall opposite to maternity ward after the road margin, so it is not obstructing any traffic. The Ld.Trial Court not considered the fact that the injunction & declaration suit between the same parties i.e. RCS No.276/2017 is allowed against the respondent and Court stated that not to obstruct the peaceful possession of the appellant & also the execution suit for the same decree is pending before the Ld.Civil Judge, Sr.Dn.,Kolhapur in Reg.Dkst.No.11/2020. The Ld.Trial Court observed that “Oxygen Supply Pipe’s cause in danger from appellant’s tea stall though the pipe’s are not passed nearby from the stall (tea)”. That observation is totally incorrect. So also the Ld.Trial Court observed that “the tea stall is making obstruction for the traffic & parking of the respondent (Ori.Applicant) that observation is also incorrect because where the appellant is having tea stall that land is totally dead end and not useful for parking. So that the impugned order dt.20/06/2022 passed by the Residential Deputy Collector, Kolhapur in Eviction Appln. No.01/2021 be stayed till final decision of the appeal. So also the eviction process apprehended by the respondent/defendant be stayed.

5) Respondents have filed their say on the said application and contended that the contents of the application are false and misleading, so that application is liable to be rejected with costs. This Court had stayed the execution of the impugned order for one month subject to condition that the appellant shall argue the appeal within three weeks failing which the order for stay was to be automatically vacated. The appellant failed and deliberately avoided to argue the matter within the said period. Therefore,

the order for stay is automatically vacated. Therefore, the previous order passed by the Court has attained finality. Hence, the appellant is not entitled any protection. Hence, the application is liable to be rejected. The appellants are taking undue advantage of their own wrongs and also making reckless allegation against the competent authority. Hence, the application is devoid of merits and same is liable to be rejected.

6) Heard Ld.advocate for the appellant and Ld.APP Mr. Mahadeshwar for respondent No.1 & No.2.

7) The appellant contended that the respondents are illegally trying to dispossess the appellant from the CPR premises and there is a possibility of taking possession from the appellant. There is no any danger to the Oxygen tank or pipe line or no any encroachment because of appellant's business.

8) It is found that the appellant has filed similar application i.e. Exh.5, which was decided on 03/08/2022 by this Court. At that time also, the appellant argued as argued today that they are ready to proceed with the final argument on appeal and if this Court granted stay till Monday, 20/01/2025, they are ready to argue Appeal i.e. final hearing of the appeal on Monday (20/01/2025).

9) This Court passed an order below Exh.5 on 03/08/2022, which reads as under :-

- i) The execution of order passed in Eviction Case No.4/2021, dated 20/06/2022 by respondent No.1 is stayed for the period of 4 (Four) weeks.
- ii) The appellant to argue the appeal (final hearing) within three weeks, failing which the stay order granted by this Court stands vacated automatically.

10) The application of the appellant is not maintainable being order of this Court not complied since 03/08/2022. It is contempt of Court's order. Hence, this Court proceed to pass following order.

ORDER

Application at Exh.22 is hereby rejected.

Date : 18/01/2025.

(Shailendra Tambe)
District Judge – 3, Kolhapur.