

MHKO120000632017



ORDER BELOW EXH.56

The decree-holder filed the present application under section 94, order 39 rule 3 and 2 and section 151 for temporary injunction against the judgment-debtor.

02. It is submitted by the decree-holder that, Regular Civil Suit No.67/1997 was filed by him against the judgment-debtor for possession of the suit property described in the para no.1 of the present application. Thereafter, the decree-holder filed the present execution petition to execute the decree passed in Regular Civil Suit. 67/1997. However, judgment-debtor filed an appeal before appellate court and the Hon'ble appellate court granted status quo in respect of the suit property. It is further submitted that judgment-debtor illegally started construction in the suit property. Moreover, the decree-holder is the old age person, hence, by this application decree-holder prayed judgment-debtor be restrained from making any construction in the suit property.

03. Judgment-debtor filed his say and contended that the present execution petition is already stayed by the Hon'ble appellate court. Hence, the present application is not tenable. So also, judgment-debtor being a tenant in the suit property, revision petition is also pending before Maharashtra Revenue Tribunal. Hence, he prayed for the rejection of the present application.

04. Heard both the advocates. Perused documents produced on record.

05. According to the decree-holder the appellate court granted

status quo in respect of the suit property. However, upon perusal of the said order at Exh. 52, Sr. No.1 passed in the Misc. Civil Appeal No.07/2018, Hon'ble appellate court specifically in operative part ordered that - *Execution and operation of decree passed in Regular Civil Suit No.67/1997 by Civil Judge, Jr. Dn., Gargoti, Tal. Bhudargad, Dist. Kolhapur dated 20/12/2016 is hereby stayed till decision of Misc. Civil Application No. 07/2018.*

06. Therefore, prima-facie, it appears that the appellate court stayed the both execution and operation of the decree passed in the Regular Civil Suit No. 67/1997. It is well settled that when the executing court has knowledge of the stay order, the court must stay its hands and anything it does thereafter would be nullity so long as the stay order is in force. Upon perusal of the order of the Hon'ble appellate court, the execution and the operation of decree passed in the Regular Civil Suit No. 67/1997 is stayed till the decision of the said appeal. Therefore, in my view it would not be appropriate decide the present application when the whole execution proceeding is already stayed by the Hon'ble appellate court. So also, as this court is not empowered to decide the present application, therefore, whether judgment-debtor is illegally constructing in the suit property or not ? can not be decided before this court. Hence, I pass the following order.

ORDER

The application stands rejected.

Place : Gargoti.
Date : 08/03/2021.

(**A. S. Koshti**)
Civil Judge Junior Division,
Gargoti.