


<u>MHKO190004712024</u> 	<p style="text-align: center;"><u>ORDER PASSED BELOW EXH.67</u></p> <p style="text-align: center;">IN</p> <p style="text-align: center;"><u>R.C.S No.190/2024</u></p> <p style="text-align: center;"><u>Namdev Dattatraya (Dattu) Patil Vs. Masu</u></p> <p style="text-align: center;"><u>Dattatraya (Dattu) Patil</u></p> <p style="text-align: center;">(Date:19/10/2024)</p>
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1. Perused the application. Ld. Advocate for defendant No.1 failed to file his say to present application. Hence, present application is decided on merit without his say.

2. Heard Ld. Advocate Shri. S. P. Wagvekar for plaintiff. He argued that the Court has rejected an application below Exh.5 filed by the plaintiff. The plaintiff wants to challenge the said order before the Hon'ble District Court, Kolhapur. It will take time to file an appeal. There is every possibility that the defendant would complete the construction over suit property by taking assistance of the order passed by the Court below Exh.5, therefore direction be given to both parties to maintain status-quo till filing appeal. In support of his argument he placed reliance on order-XLI, Rule-5(2) of the Civil Procedure Code. I want the reproduce here Order XLI, Rule-5(2) of the Civil Procedure Code as under.

2. Stay by Court which passed the decree – *Where an application is made for stay of execution of an appealable decree before the expiration of the time allowed for appealing therefrom, the Court which passed the decree may on sufficient cause being shown order the execution to be stayed.*

3. No order for stay of execution shall be made under sub-rule (1) or sub-rule(2) unless the Court making it is satisfied -
a) that substantial loss may result to the party applying for stay of

execution unless the order is made;
b) that the application has been made without unreasonable delay;
c) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.

(4) (Subject to the provisions of sub-rule (3)) the court may make an ex parte order for stay of execution pending the hearing of the application.

5) Notwithstanding anything contained in the foregoing sub-rule, where the appellant fails to make the deposit or furnish the security specified in sub-rule(3) of rule 1, the Court shall not make an order staying execution of the decree)

I want to reproduce here Order XLIII, Rule-2 of the Civil Procedure Code as under.

2. Procedure – *The rules of Order XLI shall apply, so far as may be, to appeals from orders.*

3. It is clear that provisions of Order XLI applies to Order XLIII also. The question arise before me whether it would be appropriate to grant stay of the execution of order passed by the Court. In this regard I am to state here that the legislature has vested power to stay the execution of own order which is discretionary power. It is not to be exercised lightly and it should not be stayed without justifiable reasons. While passing an order below Exh.5 the Court has recorded finding that plaintiff has failed to prove prima facie case and defendant No.1 is in possession of suit property. While passing an order below Exh.5 it is also discussed as to in whose favour balance of convenience lies. The term irreparable loss has been discussed by the Court in order passed below Exh.5. Temporary Injunction application has been decided on merits and after considering all the apprehensions of plaintiff. There is no sufficient cause to stay the order. Therefore, I am of the opinion that this is not fit case to pass an order under Order-XLI Rule 5(2) r/w Order-XLIII Rule 2 of the Civil Procedure

Code to direct the parties to maintain status-quo till filing appeal. In the light of above discussion, I pass following order.

- ORDER -

Application below Exh.67 is hereby rejected.

Place :Radhanagari.
Date :19/10/2024

(R. D. Shinde)
Civil Judge Junior Division
Radhanagari.