



ORDER BELOW EXH.23 IN R.D. No. 02/2018

01. This is an application made by the judgment debtor to stay the execution of order passed by this Court below Exh.17, directing the appointment of Court Commissioner for inspection of spot. It is contended that previous application made by the decree holder for appointment of Court Commissioner vide Exh. 9 was rejected by this Court. Thereafter, when the matter was posted for adducing evidence of the decree holder, again he made application for appointment of Court Commissioner vide Exh. 17. The judgment debtor filed his say to the said application vide Exh.20. After hearing of said application, the Court has allowed it by passing order on 05/11/2019. The judgment debtor is aggrieved by said order. Therefore, he wants to challenge it before the higher Court. Ultimately, he urged to stay the execution of order passed below Exh. 17 till appeal period.

02. The decree holder filed his say at Exh. 24 and resisted contentions made in the application. He specifically averred that the application is made only for causing delay in the matter and it is not made in accordance with provisions

of law. The said application is not supported by an affidavit. The relief so asked has no base at all. The Court cannot stay its own order. The decree holder has already deposited commission fees in the Court. On these grounds, the decree holder urged to reject the application.

03. Heard both the learned advocates for respective parties. As a matter of fact, the application of appointment of Court Commissioner made by the decree holder at Exh.17, was allowed by this Court by giving fullest opportunity to the decree holder. As such, the said application is decided on merits. This Court while deciding said application, directed the Court Commissioner to visit the spot and submit his report regarding factual position on the spot. In fact, nature of the said order is such that no prejudice would be caused or no substantial loss may result to the judgment debtor if execution of said order is not stayed by this Court. Thus, the judgment debtor has not shown any sufficient cause to stay the execution of order passed below Exh.17. As such, the application is devoid of merits. Hence, following order.

Order

1. The application is rejected.
2. No order as to costs.

Date :- 28/11/2019.

(V.V. Khulape)
Civil Judge, Junior Division,
Kale-Kheriwade.