



ORDER BELOW EXH. 153 IN R.C.S. NO. 131/2003

01. Perused the application and say filed at Exh. 155. Heard both sides. Perused the entire record. This is an application filed u/s. 151 of Civil Procedure Code.

02. Before going into the merits of application it is necessary to understand background of the matter. Present suit is filed in the year 2003. At present the suit is 21 years old or so. The suit was originally filed against defendant No. 1 to 4 for partition. Defendant No. 5 and 6 appeared in the matter. They were added as a party to the suit. The defendant No. 5 and 6 filed counterclaim and sought injunction with it.

03. Defendant No. 5 and 6 at Exh. 93 sought temporary injunction against plaintiff. My predecessor by passing order dated 02/02/2018 rejected the application of defendant No. 5 and 6. Aggrieved by the order defendant No. 5 and 6 filed Miscellaneous Civil Appeal No. 83/2018. After filing of it the defendant No. 5 and 6 at Exh. 138 made an application (dated 11/01/2019) seeking stay to

the entire proceeding since they have gone in appeal. Since then the entire proceeding was stalled. On 15/07/2023, I, by considering the entire case circumstances and that no stay to the proceeding is granted from higher Court rejected the application. Aggrieved by said order the defendant No. 5 and 6 under Section 151 of Civil Procedure Code has pressed this application.

04. Through this 14 page drafted application, defendant No. 5 and 6 elaborately and repeatedly stated few things.

- i) The Court was unjust in passing order below Exh. 138.
- ii) The Court was misguided by the plaintiff's advocate.
- iii) Court ignored judicial propriety and indirectly caused contempt of Superior Court as the appeal is subjudice before them
- iv) Defendant No. 5 and 6 relied heavily on Kishore V/s. Preeti 2007(2) Mh LJ 481
- v) Court by invoking its inherent powers should rectify the mistake and recall or review the order passed at Exh. 138 and issue contempt proceeding against plaintiff side.

05. After careful perusal of entire matter, it is fact on

record that against order of Exh. 93 appeal is pending before Hon'ble District Court. Even today the matter is at unready stage. There is no stay granted to this proceeding. The appeal is pressed against interim order. Entire suit is yet to be decided. At this stage considering for a minute that appeal is allowed or rejected the order will be valid only till life of the litigation, as the said order will be interlocutory one. It neither requires that proceeding needs to be stayed till decision of appeal. Nor it harms the case.

06. As for judicial propriety concept pressed by the Ld. Adv. of Defendant No. 5 and 6 based on citation stated above. The said case was related to family dispute in which subordinate Court knowing the appeal is pending dismissed the suit. In present case matter civil natured that of partition which is to be decided on merit. For giving fair opportunity to defendant No. 5 and 6 Court has nearly ended up stalling the case for nearly 5 years. Hence, in my humble opinion the case law though not at all squarely applicable yet Court has shown Judicial propriety to great extent.

07. As for the question of inherent power of Court

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u/s. 151 of Civil Procedure Code which needs to be invoked and order passed by me at Exh. 138 needs to be reviewed. I see no change of circumstances. Even after passing of said order one year period has lapsed and the Civil Miscellaneous appeal No. 93/2019 is pending and no stay is granted to the proceeding. Plaintiff is nearly 85 years old senior citizen who is fighting this case for nearly 2 decades of which 5 years of the proceeding was literally and stalled due to the applications of defendant No. 5 and 6.

08. As far as the issue of misleading the Court by plaintiff Court is of no such opinion towards any advocate hence the 2nd prayer of application seeking contempt proceeding against anyone does not arise. I see no just reason to consider this application. With this I pass following order.

ORDER

1. Application at Exh. 153 stand rejected.
2. Party to proceed with the suit henceforth promptly.

Date - 11/06/2024

(N.K.Nagargoje)
Civil Judge, J.D., Bhor,
Dist. Pune