

1] Present application is filed by the depts for stay of order below Exh. 5 till the appeal period. It is contentions of depts that applⁿ Exh. 5 is allowed by the court. The depts are going to file appeal against said order in the Additional District & Sessions Court, Islampur. However in the meantime there is possibility that the pl^{ffs} will change the factual position in the suit property. Hence it is necessary to grant stay for the order passed below Exh. 5. Depts prayed to allow application.

2] Ld advocate for pl^{ffs} has filed say Exh. 32 on present application & contended that applⁿ Exh. 5 is decided by the court on merit. The depts can file appeal on the order. Below which provision application is filed is not mentioned in the applⁿ. There is no provision to file such application. It is not maintainable. He prayed to reject the application.

(2)

3] Heard Both sides. Perused record. Id advocate for depts submitted that as per O.41 R.2 & O.43 R.2 court can stay of the order which passed it. If the stay is not granted depts will suffer loss. He prayed to stay the order till filing of appeal. i.e appellate period. Id advocate for plffs submitted that there is no provision to grant stay. App^l is decided on merit. Hence he prayed to reject present applⁿ.

4] I have gone through O.41 R.2 of C.P.C. - said order is in relation to appeal from original decrees & rule is in relation to stay by court which passed the decree. O.43 R.2 of C.P.C. provides procedure, wherein it is mentioned that the rules of O.41 shall apply, so far as may be, to appeals from orders. O.41 R.3 reads as no order for stay of execution shall be made under subrule (1) or (2) unless the court making it is satisfied -
(a) that substantial loss may result to party applying for stay of execution unless order is made,

⑥ that appl^m has been made without reasonable delay, etc.

5] Thus Court which passes decree may on sufficient cause being shown order the event to be stayed. Now it is necessary to move towards application of depts. Present application is given by the depts after giving date to both parties. Thereafter plffs & their ld advocate remained absent since 5.30 to 6.12 pm. yesterday. Hence it is ordered to issue urgent notice to plffs & date was fixed 06/11/23. However today ld advocate for plffs appeared & by filing p^{ers} to take matter on Board, filed their say on present application. Thus there appears no delay from the side of depts to file application. The depts have contended that the plffs will change the factual position in the suit property. Besides that nothing is contended as to what substantial loss they will suffer or any other sufficient cause. Exh-5 application is decided on merit after hearing both sides. If in such circumstance said order is stayed definitely plffs will suffer

(4)

loss than debts. ~~No~~ doubt the debts have right to file appeal on the said order but in view of above discussion they are not entitle to get the order passed below Exh-31 to be stayed. Thus considering overall legal & factual position, present application is liable to be rejected. Hence order.

ORDER

1) Application Exh-31 is rejected.

Shirala

Date: 04/11/23.

Order

04/11/2023

Jt CJP, Shirala

Tal. Shirala Dist. Sangli.