

**ORDER BELOW EXH.5 IN REGULAR CIVIL APPEAL NO.15 of 2023
(Sanjay Manohar Bachal Vs.Dhavalchandra Doshi)**

01. Heard Ld. Adv. Shri.R.R. Jadhav for Appellant. Perused written notes of argument filed by the Ld.Adv.Shri. P.K. Barasawade for respondent. Perused application, say & record.

02. Being aggrieved by the judgment and decree dtd. 09.01.2023 passed by the Civil Judge J.D. Koregaon in R.C.S. No.52/2012, directing defendant to pay Rs.2,00,000/-, to plaintiff within 60 days with interest @ 9% p.a. from 06.01.2005, till realization and interest @ 6.50 for other reliefs, defendant filed this appeal to quash and set aside said order and to dismiss the suit. With this appeal, defendant also preferred present application to stop the execution of said decree till the decision of this appeal.

03. It is alleged in this application by the defendant that said judgment and decree is passed without properly assessing the documents on record. It has against the principle of natural justice. It will take time to decide the appeal, but meanwhile if the decree is executed, defendant will suffer irreparable loss and he will be frustrated, so his application be allowed.

04. Plaintiff i.e. respondent filed say to this application at Exh.20 and alleged that, the application is false and frivolous. According to him, after considering the evidence of both the sides, the Ld. Trial Court decreed R.C.S.No.52/2012 on merit

after 14 years. Now plaintiff has filed the execution petition to recover the amount on the basis of said decree. When the suit was filed, plaintiff was 57 yrs. old. Now he is 75 yrs. old. He is suffering from various ailments. He needed money for the purpose of his medical treatment, so the decree in question should not be stayed. Instead defendant be directed to deposit decretal amount in the Court with interest and thereafter it may be invested in the fixed deposit in any Nationalized Bank. Hence unless the security or Bank guarantee is given, the execution should not be stayed.

05. At the outset, it is not disputed that, the decree in question is money decree and defendant has not filed any security or Bank guarantee along with this appeal to consider this application to stay the execution.

06. Now if the judgment and decree in question is perused, it reveals that suit was filed on 11.07.2006. It was decreed on 09.01.2023 i.e. after about 16½ years. Ld. Trial Court narrated the contention of the written statement in the judgment. From which it reveals that, it is not disputed to the defendant that he has purchased the property from plaintiff for Rs.7,00,000/- and out of that Rs.2,00,000/- was remained to be paid. It was the defence of the defendant that, there was breach of condition of some agreement and without settling that dispute, he was not liable to pay. But for that defendant can opt for the settlement or he can file suit for specific performance and recover his

money, if at all something is due from plaintiff. For that there is no need to stay the execution of impugned decree.

07. As such in no circumstances, such a old decree in question in favour of plaintiff can be stayed which was received to him after 16 long years of the Court proceeding. Hence as application is devoid of merit, following order is passed.

ORDER

1. Application is rejected.
2. In the alternative, defendant is at liberty to furnish security or Bank guarantee of decretal amount along with the interest as on the date of filing this appeal, as directed by the Ld. Trial Court and shall undertake to expedite the appeal.
3. Matter to proceed accordingly.

(Pronounced in open Court).

**Place : Satara.
Dt.12.08.2024.**

**Kamala V. Bora
District Judge-2, Satara**