

**ORDER BELOW Exh.6 in**  
**R.C.A.No.48/2024**  
**CNR-MHWR01-000690-2024**

1. This is an application filed under Order 41 Rule 5 of Civil Procedure Code, 1908, for grant of stay to operation of judgment and decree passed by Jt. Civil Judge Senior Division, Wardha dated 13.03.2024 passed in Spl. Civil Suit No. 178/2011 (Shri Balaji Mandir Deosthan Trust Vs. Smt. Sunita w/o Mohan Deshmukh and others).
2. According to appellant (original defendant no.5) he has preferred appeal against judgment and decree by which all sale-deeds dtd.2-5-2000, 4-3-2011, 16-5-2011 are cancelled and defendant no.5 and it's partners are directed to handover vacant possession of suit property i.e. S.No.271/1 and 271/2 situated at village Gunjkheda Tah. Deoli, Dist. Wardha to plaintiff within 60 days from decree. It is ordered that copy of decree be sent to Sub Registrar office Pulgaon for noting fact of cancellation. According to appellant since the date of purchasing said properties, he is in possession continuously for more than 12 years. If execution of decree is not stayed, his possession may be disturbed and he will suffer irreparable loss. He has raised various grounds in appeal and he prayed to stay execution of judgment and decree.
3. Respondent no.1.A and 1.B resisted application by filing say at Exh.16 on the grounds that sale-deed dtd.2-5-2000 alleged to be executed by plaintiff trust in favour of defendants no.1 and 2 was not proved before Trial court and they failed to file original sale-deed,

certificate of registration, index II copy etc. Further so called order of Charity Commissioner dtd.17-1-2000 allowing sale of suit property is also not proved. Respondent no.2 admitted in cross-examination that there was an element of fraud in whole thing and he refunded major portion of consideration amount to appellant after police case. Respondents no.4 and 5 are accused in Pulgaon court in case of fraud and fabrication of bogus sale-deed in respect of property of Balaji Mandir Trust. There is sufficient evidence to show that appellant no.4 and 5 played fraud and fabricated various sale-deeds to grab Trust property. Therefore only respondent Balaji Mandir Trust is at loss and appellant firm has recovered its money from respondents no.4 and 5. So as original plaintiff is fighting said case for long period of 12 years, they prayed to reject application. While arguing matter Advocate of respondents submitted that appellant is enjoying possession of suit properties without any right and even if decree is passed in favour of said respondents. Hence he prayed that some amount of compensation be granted to respondents no.1.A and 1.B if decree is stayed.

4. Certified copy of judgment and decree of Ld. Trial Court is filed on record. Even paper book is filed. Advocate of respondents no.1.A and 1.B filed copy of deposition of witness no.3 examined on behalf of defendant no.5. As per prayers in original suits, sale-deeds since beginning are challenged. Sale-deed dtd.2-5-20 was executed in favour of original defendants no.1 and 2 by plaintiff, sale-deeds dtd.4-3-11 were executed by defendants no.1 and 2 in favour of defendants no.3 and 4 and sale-deeds dtd.16-5-11 were executed by defendants no.3 and 4 in favour of defendant no.5. According to original plaintiff i.e. present respondents all these sale-deeds are null and void and

therefore cancelled by passing proper decree. He relied on evidence adduced on behalf of defendant no.5 and emphasized that original sale-deed, index II copy etc. were not filed before Ld. Trial court and if decree is stayed being Trust property, original plaintiff will suffer loss. Advocate of appellant submitted that case of appellant is of bonafide purchaser. Initial sale-deed dtd.2-5-2000 is registered document. Further sale-deeds were also duly registered and it's certified copies can be obtained from Sub Registrar office. From record it can be gathered that prior to recording names of original defendants no.1 and 2 to suit property, revenue authority has issued notice to all concerned including plaintiff trust. At that time plaintiff trust did not raise any objection. Therefore according to appellant various legal and factual aspects are raised in appeal which have to be decided on merit.

5. It appears that in suit, prayers were regarding cancellation of sale-deeds and possession of suit properties. There was no prayer regarding damages or means profit. Considering various grounds raised, same are to be decided on merit and if execution of decree is not stayed and if it is executed, appellant will suffer loss. Purpose of appeal will be frustrated. Considering nature of suit, decree, fact of possession of appellant, in the interest of justice it is proper to allow the stay application.

**- ORDER -**

- 1] The application Exh.6 is hereby allowed.
- 2] Execution of decree passed by the learned Jt. Civil Judge, Senior Division, Wardha in Spl. Civil Suit No.178/2011 (Shri Balaji Mandir

Deosthan Trust Vs. Smt. Sunita w/o Mohan Deshmukh and others) dated 13.03.2024 is stayed till the final hearing and disposal of the appeal.

- 3] Both parties to co-operate in expeditious hearing of appeal.
- 4] Inform to Ld. Trial Court.

Dt. 21.08.2024

(Smt.R.V. Adone)

District Judge-3, Wardha.

**Certificate**

“ I affirm that the contents of the P.D.F. File order are same word for word as per original order.

[S.V. Dakhane]  
(Stenographer G-1)