

RCA No. 163/2015**Order Below Ex-5****Dt. 15.10.2016**

1. The present application is filed for grant of stay to the effect, operation and execution of the impugned judgment and decree dt. 25.08.2015, passed in Spl. Civil Suit No. 170/2008, till final decision of the appeal.

2. It is contended that in Spl. Civil Suit No.170/2008 filed for specific performance of contract, the learned trial Judge was pleased to decree the suit and directed the plaintiff to deposit the amount of remaining consideration of Rs. 11,79,000/- in the Court within 30 days. Accordingly, respondent nos.1 and 2 deposited said amount in the Court vide CR. No. 276, dt. 28.09.2015. It is further contended that applicant/ appellant has established a very good case on merits and is likely to succeed in the appeal in all probabilities. However, there is a bonafide apprehension that pending disposal of appeal, the decree for eviction might be executed, which would cause grave injustice and loss to the appellant. Therefore, appellant prayed for grant of stay.

3. Respondent nos.1 and 2 by filing reply at Ex-20 opposed the application on the ground that there is no merit in the appeal and appeal is filed only for killing time for execution of sale-deed of suit property and handing over possession thereof. The respondents have also prayed for refund of amount deposited by them or for depositing the same in fixed deposit.

4. Heard learned advocate for the appellant and learned advocate for the respondents. Perused the record.

5. The decree relates to immovable property. Therefore, if the respondents have executed the decree, the very purpose of filing of appeal would be frustrated, and therefore, the application deserves to be allowed. Hence, I pass the following order.

Order

- 1) Execution of judgment and decree passed in Spl.CS No. 170/2008, dt. 25.08.2015, is stayed till final decision of the appeal.
- 2) Trial Court is directed to deposit amount of Rs. 11,79,000/- in fixed deposit in any of the nationalized banks in its name for a period of 3 years.
- 3) Inform the trial Court accordingly.

Wardha
Dt. 15.10.2016

(Smt. S. D. Raikar)
Principal District Judge,
Wardha

CERTIFICATE

I affirm that the contents of this PDF file order are same word to word, as per the original order.

Name of Stenographer	:	S. S. Sakharkar, PA
Court	:	Principal District and Sessions Judge, Wardha
Date	:	15.10.2016
Order signed by the Presiding Officer on	:	15.10.2016
Order uploaded on	:	17.10.2016