

R.C.A. No.140/2019  
CNR No.MHWR010022842019  
Ashok Vs. Bhanudas  
**Order below Exh.6**

(1) Heard Learned Advocate Shri. J.B. Tinghase for the appellant and Adv. Shri S.Z. Naik for the respondent.

(2) The Ld. 8<sup>th</sup> Jt. Civil Judge (Jr.Dn.), Wardha as per impugned judgment and decree dated 5.6.2018 passed decree for ejectment of the defendant/appellant and directed him to pay arrears of rent of Rs.63,000/-. The trial Court also dismissed the counter claim of the defendant for relief of specific performance for agreement for sale. The appellant/defendant challenge the decree in this appeal and requested under Order 41 Rule 5 of C.P.C. to stay the execution of the decree.

(3) initially the application for condonation of delay filed with present appeal was dismissed, but the Hon'ble High Court vide judgment and order dated 22.10.2019 in Writ Petition No. 3901/2019 condone the delay with direction to the appellant to deposit amount of Rs.60,000/-. The appellant stated to have deposited the amount of Rs.60,000/- before the Hon'ble High Court.

(4) As per the case of the plaintiff/respondent the agreed rent was Rs.3,000/- per month, and in the written statement denied the quantum of the rent amount, and

claimed that initially he was tenant, but afterwards the plaintiff executed agreement for sale after accepting earnest amount Rs.3,50,000/-.

(5) The house property is situated at Nalwadi. There is dispute about even about quantum of rent. However, considering the fact that the defendant/appellant is enjoining the suit house property, it would just and proper to grant stay to the execution of the decree with condition that the appellant shall deposit Rs.2,000/- per month as compensation/mesne profit from the date of decree till disposal of the appeal on merit. It would be just and proper to grant suitable installment. So also this being first appeal, the defence of the appellant will have to be tested on merit, therefore, it is necessary to grant stay to the execution of the decree. In the result, I pass following order.

### **ORDER**

(1) The execution of judgment and decree dated 5.6.2018 passed by 8<sup>th</sup> Jt. Civil Judge (Jr.Dn.) in R.C.S.No. 68/2015 is stayed for a period of 6 months from today on following conditions :-

(i) The appellant/defendant shall deposit Rs.1,12,000/- (i.e. Rs. 2,000/- per month from 5 June 2018 to 5 January 2023) in 4 monthly equal installments, and each of the installment of

Rs.28,000/- shall be paid on or before 20<sup>th</sup> of each month commencing from 1 February 2023.

(ii) The appellant further continue to deposit Rs.2000/- per month from 5 January 2023 and onwards till disposal of the appeal.

(iii) In case the appellant fails to pay two installments of Rs. 28,000/-, present stay order shall stand vacated.

(2) Inform to the trial Court.

Date : 17.1.2023

(N. B. Shinde)  
District Judge-1,  
Wardha.

**C E R T I F I C A T E**

*I affirm that the contents of this P.D.F. file are same word to word, as per the assigned order.*

*(Anil N. Nakhate)*  
*Stenographer (Grade-1)*