

**HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

MONDAY, THE TWENTY SEVENTH DAY OF DECEMBER,
TWO THOUSAND AND EIGHTEEN
PRESENT
THE HONOURABLE SRI JUSTICE **M. SEETHARAMA MURTI**



IA. No. 1 of 2017
IN
I.A. No. 1 of 2018
IN
CCCA.MP No. 265 of 2017 IN CCCA.No. 107 of 2017

IA. No. 1 of 2017 (CCCAMP. No. 265 of 2017)

Between :

Mohd Abdul Razzak, S/o. late Mohd. Abdul Wahab.

...Petitioner
(Appellant in CCCA.No. 107 of 2017
on the file of High Court)

AND

1. Syed Abdul Sattar, S/o. Syed Abdul Azeemuddin, R/o. H.No. 4-1-1/24,
King Koti, Hyderabad.
..Respondent/Plaintiff.
2. Muzafrullah Khan, S/o. Gafarullah Khan, R/o. H.No. 17-7-702,
Brahmanvadi, Ykutpura, Hyderabad.

Respondents
(Respondents in -do-)

Petition under Section 151 of CPC., praying that in the circumstances stated in the affidavit filed herein, the High Court may be pleased to stay the judgment and decree passed in O.S. No. 2230 of 2006, dated : 13.02.2017, on the file of the Additional Judge-cum-VI Senior Civil Judge, City Small Causes Court, Hyderabad, pending disposal of CCCA. No. 107 of 2017 on the file of High Court.

I.A. No. 1 of 2018:

Between :

Syed Abdul Sattar S/o. Syed Abdul Azeemuddin.

..Petitioner/Respondent No.1 in
CCCAMP.No. 265 of 2017 &
(Respondent No.1 In CCCA.No. 107 of 2017
on the file of the High court)

AND

1. Mohd. Abdul Razzak, S/o. Late Mohd. Abdul Wahab, R/o. H.No. 22-7-266,
Deevan Devdi, Hyderabad.
Petitioner in IA. No. 1 of 2017 (CCCAMP.No. 265 of 2017)
2. Muzafrullah Khan, S/o. Gafarullah Khan.

(2nd Respondent is not necessary party to this IA)

..Respondent/Petitioner &
Respondent No.2 in -do-

Petition under Section 151 CPC praying that in the circumstances stated in the counter affidavit filed therewith, the High Court may be pleased to vacate the interim order granted in CCCAMP.No. 265 of 2017 in CCCA.No. 107 of 2017 dated 14.6.2017.

The petition coming on for hearing, upon perusing the petitions and the affidavit filed in IA. No. 1 of 2017 (CCCA.MP.No. 265 of 2017) and counter affidavit filed in IA. No. 1 of 2018 and order of the High Court dated 14-06-2017 made herein and order dated 19-09-2018 made in CCCAMP.No. 265 of 2017 and order dated 5-10-2018 and 12-11-2018 in IA. No. 1 of 2018 and dated 26-11-2018 made herein, and upon hearing the arguments of Sri V. Siva Prasad, Advocate for Petitioner in IA. No. 1 of 2017 (CCCA.MP.No. 265 of 2017) and Respondent in I.A.No. 1 of 2018 and of Sri M. Ram Mohan Reddy, Advocate for the Respondent No.1 in IA. No. 1 of 2017 (CCCA.MP.No. 265 of 2017) and Petitioner in I.A.No. 1 of 2018, the Court made the following

ORDER :

CCCA MP no.265 of 2017 is filed by the unsuccessful appellant/1st defendant requesting to grant stay of the decree & judgment, which are impugned in the appeal.

On 14.06.2017, this Court granted stay orders, as prayed for, subject to payment of half of the decretal amount, along with interest granted by the trial Court, within four weeks from that day. In the said orders, it was observed that in default of payment, the stay orders shall stand vacated without further reference to the Court. The said order is being extended from time to time.

While so, the sole plaintiff/1st respondent in the appeal filed I.A.no.1 of 2018 requesting to vacate the said orders.

I have heard the submissions of *Sri M.Ram Mohan Reddy*, learned counsel appearing for the vacate stay petitioner/plaintiff, and of *Sri V.Siva Prasad*, learned counsel appearing for the 1st respondent/1st defendant. I have perused the material record including the affidavits filed in support of the interlocutory applications, decree & judgment, which are impugned, grounds urged in the memorandum of appeal.

Be it noted that the plaintiff's suit for recovery of money was decreed by the impugned judgment and the 1st defendant/appellant is directed to pay Rs.8,50,000/- to the plaintiff together with interest @ 6 % per annum on the said amount, from the date of the suit till the date of realization. However, the suit insofar as the relief of perpetual injunction in respect of the suit schedule mulgi was dismissed.

Aggrieved of the said part of the decree for money granted in favour of the plaintiff, the unsuccessful 1st defendant preferred this appeal and obtained orders of interim stay, as noted supra.

It is not in dispute that the condition imposed is duly complied with.

Now, the question is as to whether the stay orders shall be made absolute or the stay orders are to be vacated as being sought for by the 1st respondent/plaintiff?

The case of the appellant/1st defendant is that in view of the grounds urged, the appellant/1st defendant has got fair chances of success in the appeal and that this Court while granting interim stay orders imposed adequate conditions keeping in view the interests of both the parties and that, therefore, the said orders may be made absolute and the vacate stay petition may be dismissed. He further submits that if stay order is vacated and the decree comes to be executed, the purpose of filing the appeal would be lost and that the appellant/1st defendant suffers serious and irreparable loss.

Per contra, the case of the 1st respondent/plaintiff (vacate stay petitioner), in brief, is this:

'The judgment of the Court below is a well considered and reasoned judgment. Because of the stay orders, the 1st respondent/plaintiff is not in a position to realize the fruits of the decree. In the event, this Court is not inclined to vacate the stay orders, the 1st respondent/plaintiff may be permitted to withdraw the amount deposited by the appellant/1st defendant, with accrued interest thereon if any, by following the procedure established by law.'

In reply, learned counsel submitted that if the deposited amount is permitted to be withdrawn by the 1st respondent/plaintiff, the purpose of filing the appeal would be defeated as appellant/1st defendant has strong case and a fair chance of success in the appeal.

I have given thoughtful consideration to the facts and submissions.

The appellate court, may, for sufficient cause order stay of execution of a decree on such terms and conditions as the Court may think fit. Unless there are exceptional/ strong and special circumstances, under Order 41 Rule 5(5) a deposit or a security is a condition precedent for an order by the appellate Court staying the execution of the decree. Under Order 41 Rule 1(3) where the appeal is against a decree for payment of money, the appellant shall, within such time as the Appellate Court may allow, deposit, the amount disputed in the appeal or furnish such security in respect —

thereof as the Court may think fit. A bare reading of the two provisos shows discretion is conferred on the appellate court to direct either deposit of amount disputed in the appeal or to permit such security in respect thereof as the appellate court may think fit. Nevertheless, as per the settled legal position and the decision in *Sihor Nagar palika Bureau v. Bhabhlubhai Virabhai & Co.* [(2005) 4 SCC I] the discretion is to be exercised judiciously and not arbitrarily, depending on the facts and circumstances of a given case and that ordinarily, execution of money decree is not stayed inasmuch as satisfaction of money decree does not amount to irreparable injury and in the event of the appeal being allowed, the remedy of restitution is always available to the successful party and that still the power is there, of course a discretionary power, and is meant to be exercised in appropriate cases.

Having regard to the nature of the decree, the conditions imposed while granting interim orders and the grounds urged in the memorandum of appeal, which require detailed examination, at an appropriate later stage when the appeal comes to be heard on its merit, this Court is satisfied that the stay orders can be made absolute, however, by allowing the 1st respondent/plaintiff to withdraw the amount deposited by the appellant/1st defendant pursuant to the interim stay orders.

In the result, the interim stay orders are made absolute. As a sequel to the findings, I.A.no.1 of 2018 is partly allowed and the 1st respondent/plaintiff is permitted to withdraw the amount deposited by the appellant/1st defendant to the credit of the suit along with interest accrued, if any, by following the procedure established by law, however, without prejudice to the rights & contentions of both the parties in the appeal.

Sd/- T.KRISHNA KUMAR
ASSISTANT REGISTRAR

// TRUE COPY //

for ASSISTANT REGISTRAR

To

1. The Additional Judge-cum-VI Senior Civil Judge, City Small Causes Court Hyderabad.
2. One CC to Sri M. Ram Mohan Reddy, Advocate(OPUC).
3. One CC to Sri V. Siva Prasad, Advocate(OPUC).
4. Two spare copies.

KK

HIGH COURT

MSRMJ

DT: 27-12-2018

ORDER

I.A. No. 1 of 2017

IN

I.A. No. 1 of 2018

IN

CCCA.MP No. 265 of 2017

IN

CCCA.No.107 of 2017

INTERIM ORDER IS
MADE ABSOLUTE

