

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

SECOND APPEAL NO. 567/2007
(Shyamsunder Mahadeo Khandelwal & 2 others vs. Chandraprakash
Ramdayal Agrawal & others.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions Court's or Judge's orders
and Registrar's orders.

CORAM : S.R.DONGAONKAR, J
DATED : 6th AUGUST, 2008.

C.A. NO. 8320/2007

Heard Shri V.M.Deshpande, Advocate, for the appellant/applicant and Shri B.N.Mohta, Advocate, for R-1/org. respondent.

2/- It appears that decree for possession was granted in favour of the respondent. There are concurrent findings of the Courts below. This second appeal has been admitted on 26th November, 2007.

3/- The stay to the decree of possession is sought. As such it could be ordered that the appellant should furnish the surety.

4/- For considering the quantum of the surety, it would be seen that the learned appellate Judge while staying the decree for possession had ordered furnishing of surety initially to the extent of Rs. 2,00,000/-, which was later on enhanced to Rs.2,50,000/-.

5/- In writ petition against that order, this Court had ordered the appellant to furnish the surety of Rs. 5,00,000/-. This was in January, 2005.

6/- Learned counsel for the respondent and perhaps rightly contended that the appeal is likely to take much time for disposal

and therefore, the respondents are likely to be deprived of the fruits of the litigation for considerably long time. He has calculated the possible loss to the tune of Rs.85,00,000/- till this date only. The basis for such calculation is also given in the reply.

6/- It is certain that this appeal can not be disposed of in near future. It also appears that this Court while considering the quantum of surety, considered the quantum of Rs.5,00,000/- as suitable while passing the order in January, 2005.

7/- Taking overall consideration of the matter, for the present I think it would suffice to order appellant to furnish solvent surety of Rs.50,00,000/- (Rs. Fifty Lakhs) considering the general steep rise in the prices of lands while granting stay to the execution of the judgment & decree of the court below.

8/- Accordingly, this application is allowed subject to condition of appellant's furnishing surety of Rs.50,00,000/- to secure for the probable loss that may be caused to the respondent in case of his failing to succeed in the appeal.

9/- Application stands disposed of.

10/- On oral request, time of three months is granted to comply with the order.

JUDGE

Rvjalit