

  
**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT  
JODHPUR**

S.B. Civil First Appeal No. 76/2026

Jagdish S/o Shri Nirana Ram, Aged About 66 Years, R/o Chak  
654 Rd, Behrwala Klaathehsil-Tibbi, District-Hanumangarh, (Raj).

----Appellant

Versus

Sohan Lal S/o Amar Singh, R/o Nirwal,tehsil, Rawatsar, District,  
Hanumangarh,rajasthan.

----Respondent

---

|                   |   |                                             |
|-------------------|---|---------------------------------------------|
| For Appellant(s)  | : | Mr. Ajeet Singh                             |
| For Respondent(s) | : | Mr. Sushil Bishnoi with<br>Mr. Rahul Mandan |

---

**HON'BLE MS. JUSTICE REKHA BORANA**

**Order**

**29/04/2026**

1. Admit. Issue notice.
2. Notices need not be issued as the respondent is already represented by counsel who has put in appearance in caveat.
3. Heard on stay petition.
4. Counsel for the appellant submits that an interim order deserves to be granted as in absence thereof, the first appeal itself would render infructuous.
5. Per contra Counsel for the respondent submits that no interim order deserves to be granted in the matter as the judgment as passed by the learned Trial Court is in consonance with law. The learned Trial Court after recording specific findings qua all the issues has decreed the suit in favour of the plaintiff.

6. In the alternate, counsel submits that if the Court is inclined to grant any interim order, appropriate order for grant of *mesne* profit be issued in favour of the plaintiff.

7. In support of his submission, counsel relied upon two interim orders dated 29.05.2013 and 07.05.2014 passed by Co-ordinate Benches of this Court in *S.B. Civil Regular First Appeal No.180/2013; Rajesh Kumar vs. Sunil Kumar & Anr. & S.B. Civil Regular First Appeal No.56/2014*, respectively.

8. After hearing counsel for the parties, this Court is of the clear opinion that the present appeal being a regular first appeal, the appellant has a statutory right of admission of the appeal. Further, keeping into consideration the huge pendency of fresh matters, this Court cannot proceed on to decide the first appeal itself at this stage.

9. In that view, the decree of specific performance deserves to be stayed as if the same is not done, ultimately, the appeal as filed by the appellant, if stands allowed, there would be no relief surviving which could be granted to him at that stage.

10. So far as the grant of *mesne* profit is concerned, this Court in ***Hariram Vs. Harish Kumar; S.B. Civil First Appeal No. 593/2018***, had taken a view as under:

*"14....until a conveyance is actually executed pursuant to an agreement for sale, the promisee under the agreement is not entitled to any proprietary interest in the property at all. Even on the passing of a decree for specific performance, no title passes until a conveyance is actually executed by the Defendant in obedience to the decree or orders of the court in execution of the decree. Until*

*the title actually passes to the Plaintiff, the Defendant continues to be the owner of the property and he cannot be said to be in unlawful possession there of so as to hold him liable for mesne profits.*

*Further, in view of the ratios of the above judgments, it cannot be concluded that in every appeal, wherein a decree for specific performance of contract is under challenge, mesne profit has to be granted to the decree holder if the decree in question is stayed."*

11. Further, therein, while dealing with the issue as to why it is not mandatory to award *mesne* profit in every appeal where a suit for specific performance has been decreed in favour of the plaintiff, this Court held as under:

*"18. Furthermore, the present is a suit for specific performance which has been decreed in favour of the plaintiff and if ultimately the present appeal as preferred by the appellant is dismissed, the respondent-plaintiff would be entitled for execution of the sale deed in his favour on the same consideration amount as agreed for in the agreement to sell which was executed way back in the year 2010. Meaning thereby, he would not be required to pay any additional consideration amount for the increased market price qua the land in question. The said fact, in the opinion of this Court, is a sufficient consideration qua the user of the land by the defendant. Equally, the appellant-defendant, who is, and would be enjoying user of the property till disposal of the appeal, would also be under an obligation to execute the sale deed in favour of the respondent without any additional consideration amount qua the*

*increased market price which definitely is increasing with time. On the other hand, if the appeal as preferred by the appellant is allowed, the plaintiff-respondent would definitely be entitled for refund of the paid consideration amount alongwith interest at the rate prevailing at that point of time. Meaning thereby, the equities would be appropriately balanced between the parties.”*

12. In view of the above, this Court does not find it a fit case for grant of *mesne* profit.

13. Conclusively, pending the final hearing and disposal of the present appeal, effect, operation and execution of judgment & decree dated 30.10.2025 passed by Additional District Judge No.2, Hanumangarh in Civil Suit No.87/2018 (CIS No.87/2018) shall remain stayed.

14. However, the appellant shall be restrained from alienating/transferring or creating any third party right on the same.

15. Stay petition stands **disposed of**.

16. List for hearing in due course.

**(REKHA BORANA),J**