

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

WRIT PETITION NO. 5360 OF 2014

SURESH SHIVRAM KANAWADE
VERSUS
SUVARNA MADHAV KANAWADE

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Advocate for Petitioner : Mr. Bhide Vinod Y.

Advocate for Respondent : Mr. S.K. Shinde.

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CORAM : **N. W. SAMBRE, J.**

DATE : 01st April, 2015.

Per Court:

1 The order passed by the District Judge – 1, Sangamner on 24th April, 2014, below Exhibit – 7 on an application moved by Petitioner – Defendant for stay of the money decree passed in the Regular Civil Suit No.142 of 2012, is impugned herein.

2 The Petitioner – original Defendant would urge that the lower Appellate Court has failed to take into account the Bombay High Court Amendments and the provisions of Order XLI so as to canvass that in exceptional case, if the judgment debtor makes out a case before the Appellate Court, it is open for the Appellate Court to waive the condition of deposit of decretal amount. He would further urge that if the document at Exhibit – B which was a basis for the suit in question, if perused, the only conclusion that could be drawn is, it was outright transfer of

immovable property. According to him, the order passed by the lower Appellate Court directing deposit of 50% of the decretal amount is liable to be modified by granting blanket stay in his favour.

3 The learned counsel for the Respondent would urge that the appeal is of the year 2012 and can be decided on merits, expeditiously. In addition to above, he has placed reliance upon the language of Order XLI, Rule 1 Sub-Rule (3) and Sub-Rule (5) of Rule 5, so as to canvass that the order passed by the lower Appellate Court directing deposit of 50% of the decretal amount by the Petitioner is reasonable and in accordance with law.

4 Upon analyzing the submissions of the respective parties, it is required to be noted that the document at Exhibit – B, which was found to be a basis for passing of the decree, the interpretation whereof is an issue sought to be raised before this Court. The present petition is preferred against an interlocutory order and the main issue presently pending before the lower Appellate Court. The interpretation of the said document Exhibit – B, at this stage, particularly in absence of the evidence before this Court, will be dangerous to the interest of either of the parties. This Court cannot lose sight of the fact that there is a money decree holding the field against the present Petitioner.

5 In view thereof, in my opinion, the contention canvassed by the

Petitioner for waiving the condition for operation of stay is liable to be rejected.

6 In the facts and circumstances of this case, it will be appropriate having regard to the interest of the parties to expedite the hearing of Regular Civil Appeal No.78 of 2012, pending on the file of District Judge – 1, Sangamner.

7 In the result, no case for interference is made out. The petition stands dismissed.

8 In view of the fact that 25% amount is deposited before the Appellate Court, the Respondent – Plaintiff will be at liberty to apply for withdrawal of the same, which request shall be considered in accordance with law.

[N. W. SAMBRE, J.]

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