

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11177 OF 2014

NUSRAT JAHAN @ SHAKILA BEGUM BABU KHAN
VERSUS
RABBANI KHAN LAL KHAN PATHAN AND ANOTHER

.....
Advocate for Petitioner : Mr. Shaikh Mujtaba Gulam Mustafa
Advocate for respondents : Mr. Y.M. Khan
.....

CORAM : V. K. JADHAV, J.

DATED : 21st SEPTEMBER, 2015

P.C. :-

1. The petitioner, who is the original plaintiff, instituted Regular Civil Suit No. 317 of 2004 for recovery of possession, mesne profit and injunction. The learned Civil Judge Junior Division, Nanded has decreed the suit by its judgment and decree dated 30.04.2012. Being aggrieved by the same, the respondents had filed Regular Civil Appeal bearing RCA No. 128 of 2013 before the District Judge-1, Nanded and also filed an application for staying the effect of the judgment and decree challenged in the appeal. The learned Ad-hoc District Judge-1, Nanded, by the impugned order dated 16.10.2014, allowed the application at Exh. 3 and thereby stayed the execution of the decree in Regular Civil Suit No. 317 of 2004 till disposal of the appeal. The learned Ad-hoc District Judge-1 has further directed expeditious hearing of appeal without adjournment by any party on

any ground. This order came to be challenged by the petitioner /original plaintiff in this writ petition.

2. The learned counsel for the petitioner submits that so far as the order of mesne profit, passed by the trial court is concerned, the learned Ad-hoc District Judge, instead of directing the respondents to furnish a security to the extent of the directions regarding mesne profit by the trial court, stayed the judgment and decree in its totality till disposal of the appeal.

3. The learned counsel for the respondents submits that the learned Ad-hoc District Judge-1, Nanded, has taken care of the situation and directed expeditious hearing of the appeal without adjournment by any party on any ground. The learned Ad-hoc District Judge, Nanded has further directed in the impugned order that on failure to progress in the appeal because of the parties, the stay will be vacated automatically without any specific order.

4. In view of the above, there is no point in directing the lower appellate court to direct the respondents to furnish security and then, to decide the appeal expeditiously, as observed in the impugned order. The learned counsel for both the parties submit that their respective clients would cooperate with the lower appellate court to

dispose of the appeal within three months from today.

5. In view of this, following order is passed.

ORDER

- I. The lower appellate court is hereby directed to dispose of Regular Civil Appeal No. 128 of 2013 within a period of three months from today.
- II. Writ petition is disposed of in terms of the above order.
No costs.

(V. K. JADHAV, J.)

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