

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CAF No.1371 of 2015

in

FA No.549 of 2015

Prashant Joshi

..vs..

Rajesh Shamrma and anr

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

Court's or Judge's order

Shri A.R. Deshpande, counsel for the applicant / appelalnt.
Shri M.G. Sarda, counsel for NA No.1/Resp.

CORAM : A.P. BHANGALE, J.

DATE : JUNE 23, 2015.

Heard.

The applicant (appellant), who was original defendant No.1 in Special Civil Suit No.80 of 2012 decided by the learned Joint Civil Judge Senior Division, Akola, prays for interim stay of the preliminary decree directed to be drawn on by the trial Court

It appears that there was a partnership firm viz. M/s. Joshi Engineer and Associates which consisting of four partners. The partnership came to be dissolved in 2008. The applicant used to look after entire project thereafter. The agreement of partnership was executed on 12.2.2008 between applicant and respondent No.1 and the bank account in the name of Shri Agrasen Sahakari Pat Sanstha Maryadit, Shegaon was open. It is submitted that there is error of law in

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granting preliminary decree in favour of plaintiff / respondent No.1 and the appellant was only restrained from drawing the amount of cheque issued by the Municipal Council drawn in favour of M/s. Joshi Engineer and Associates. The trial Court had dissolved the partnership between the appellant and respondent No.1 while granting injunction against respondent No.1. It is, therefore, prayed that interim stay may be granted.

Learned counsel for non-applicant No.1 opposes the application for grant of stay on the ground that the partnership firm viz. M/s. Joshi Engineer and Associates consisting of four partners was dissolved in 2008. The work of project was carried out by M/s. Joshi Engineer and Associates consisting of two partners appellant and respondent No.1. The bank account is also existed in the name of M/s. Joshi Engineer and Associates which consisted of two partners namely appellant and respondent No.1.

Considering these facts, monetary liability in respect of dissolved of the partnership firm can be considered at final hearing of the appeal.

Meanwhile, even if the amounts are withdrawn with the help of specific bank account, this Court can consider the transaction done pursuant to the decree passed by the trial Court and can pass appropriate orders at final hearing of the appeal. Hence, no ground is made out to entertain the prayer for stay to the operation of impugned order which is in the nature of preliminary decree. The executing court

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may proceed to pass orders to implement it which may be brought to the notice of the court.

The civil application is disposed of as such.

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Heard.

ADMIT.

The record and proceedings be called for.

Learned counsel waives notice for respondent No.1.

To be listed after the record and proceedings are received.

JUDGE

!! BRW !!

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