

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

WRIT PETITION NO.6118 OF 2015

Central Bank of India, Akola Thr. its POA Ramesh s/o Kawluji Hedau

-vs-

M/s Vora Automotives Pvt. Ltd. Akola, Thr. its Branch Manager

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

Court's or Judge's Orders.

Shri A. T. Purohit, Advocate for petitioner.

CORAM : A.S.CHANDURKAR, J.

DATE : November 17, 2015

The petitioner herein is aggrieved by the order dated 01/07/2015 passed below Exhibit-47 in the execution proceedings. The respondent had filed suit for possession along with recovery of damages against the petitioner. Said suit was decreed on 25/03/2011 directing the petitioner to pay Rs.5000/- with interest. There was a further direction to hold enquiry for mesne profits. This decree was thereafter challenged in an appeal. When the decree was sought to be executed, the petitioner filed an application seeking stay of the proceedings with regard to enquiry into mesne profits under Section 10 of the Code of Civil Procedure. By the impugned order said application has been rejected.

Shri A. T. Purohit, learned counsel for the petitioner submitted that proceedings between the same parties were pending before the Original side of the High Court at Bombay and further the appeal challenging the decree was also pending when said application came to

be moved. He therefore submitted that under Section 10 of the Code, enquiry into mesne profits was required to be stayed.

It is to be noted that provisions of Section 10 of the Code would apply only with regard to seeking stay of a subsequent suit. The enquiry into mesne profits is pursuant to a decree passed in favour of the respondent. Hence there is no jurisdictional error in the order passed by the trial Court by which the application moved by the petitioner has been rejected. There is no merit in the writ petition, same is therefore dismissed with no order as to costs.

JUDGE