

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3823/2015

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. A. M. Kulkarni for the petitioner
Mr. Sandesh D. Patil i/b. Anusha P. Amin for the respondent

CORAM : K. K. TATED, J.

DATE : JUNE 29, 2016

P.C.:

1. Heard. By this petition under Article 227 of the Constitution of India the Petitioner plaintiff challenges the order dated 16.03.2015 passed by the learned Adhoc District Judge 1 Sangli below Exhibit- 10 in Misc. Civil Application No.8/2015 granting stay to the judgment and decree dated 17.09.2012 passed in counter claim in Regular Civil Suit No.106/2006 on furnishing solvent security of Rs.10 lacs.

2. In the present matter, the petitioner plaintiff filed Regular Civil Suit No.106/2006 for an order of injunction restraining the respondent defendant from disturbing her possession in respect of the suit property as described in paragraph 1 of the plaint. In that suit, the defendant filed counter claim claiming possession of the suit property as owner.

The suit filed by the plaintiff was dismissed by the Trial Court and the counter claim was allowed. The Trial Court by judgment and decree dated 17.09.2012 directed the plaintiff to hand over vacant and peaceful possession of the suit property to the defendant within a month from the date of order and the defendant to deposit sum of Rs.70,000/- within a month.

3. Decree dated 17.09.2012 was challenged by the plaintiff before the District Court Sangli being Regular Civil Appeal No.572/2012. In the said appeal, the plaintiff made an application for stay of the judgment and decree dated 17.09.2012 passed by the Trial Court. Same was allowed by the appellate court by order dated 08.07.2013 staying the execution of the judgment and decree passed in Regular Civil Suit No.106/2006 on condition that the plaintiff has to prepare a private paper book at his own cost. Thereafter the Regular Civil Appeal No.572/2012 stood dismissed for default by order dated 16.12.2014. Hence, the plaintiff made Misc. Civil Application No. 8/2015 for restoration of the appeal. The plaintiff made an application below Exhibit- 10 for stay of the impugned judgment and decree passed by the Trial Court. On that application below Exhibit- 10, the appellate court granted conditional stay on

furnishing solvent security to the extent of Rs.10 lacs by the plaintiff. Hence, the Writ Petition.

4. The learned counsel for the plaintiff submits that in the present proceedings, this court by order dated 16.04.2015 directed the plaintiff to furnish solvent security of Rs. 3 lacs to stay the execution of decree dated 17.09.2012. He submits that pursuant to the said order, the plaintiff already furnished solvent security of Rs. 3 lacs. He submits that the Regular Civil Appeal No.572/2012 and Misc. Civil Application No. 8/2015 is pending for hearing on its own merits. He submits that in the interest of justice, this Hon'ble Court be pleased to continue the interim protection dated 16.04.2015 granted by this court with direction to the appellate court to decide the Misc. Civil Application No. 8/2015 as early as possible.

5. On the other hand, the learned counsel for the defendant vehemently opposed the Writ Petition. He submits that the appeal preferred by the plaintiff is already dismissed by the appellate court. He submits that the plaintiff has not made out any case in Misc. Civil Application No. 8/2015 for restoration of the appeal. Hence, there is no substance in the Writ Petition. Same to be dismissed with costs.

6. Heard the learned counsel for the parties at length. It is to be noted that in the present proceedings, the impugned order passed by the appellate court dated 16.03.2015 is already stayed directing the plaintiff to furnish solvent security of Rs.3 lacs. As the Civil Appeal itself is of the year 2012 and Misc. Civil Application No. 8/2015 is pending for restoration of the appeal, without giving any reasons, on the basis of submission made by both the counsel, following order is passed:

- a. Interim protection granted by this court on 16.04.2015 to continue till hearing and final disposal of the Misc. Civil Application No. 8/2015.
- b. Hearing of the Misc. Civil Application No. 8/2015 is expedited.
- c. This court expects that the appellate court would decide the Misc. Civil Application No. 8/2015 as early as possible but in any case on or before 31.12.2016.
- d. Writ Petition stands disposed of accordingly.

JUDGE