

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO. 3833 OF 2015
IN
FIRST APPEAL NO. 1579 OF 2016**

Mrs.N.Kohil	...	Appellant
Versus		
A.P. Thomas (since deceased) through LRS		
Mr.Nevin Mark Peters & Anr.	...	Respondents

Mr.Ashwin Shete with Ms.Pratiksha Kabre i/b. M/s.Jaykar & Partners for Appellant.

Ms.Pranjali Bhandari for Respondent No.1.

Mr.Samual Rege i/b. Crawford Bayley & Co. for Respondent No.2.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 25TH OCTOBER, 2016.

P.C. :

1] This is an application seeking stay to the execution effecting the implementation and operation of the judgment and order dated 28th July, 2015, passed by Judge, City Civil Court, Mumbai in S.C. Suit No.8571 of 1993.

2] As the said stay is sought to the execution of the money decree, it is necessary that the appellant deposit at-least the principal amount before seeking stay to the execution of the money decree. As per the order of the trial Court, the appellant has to pay Rs.6,66,180/- with interest at the rate of 18% per annum, on the amount of Rs.5,94,805/- from

the date of the suit till its realization.

3] In view of the interest rate of 18% per annum as ordered by the trial Court, the payable amount as on today comes to Rs.32,00,000/-.

4] The learned counsel for the appellant submitted that the appellant is 78 years old lady and she is suffering from alzheimer disease, her husband is also 87 years of age. It is submitted that in such a situation the appellant is unable to pay this entire amount of Rs.32,00,000/- in cash. It is submitted that the bungalow of the appellant at Juhu, Mumbai is already attached in execution proceedings. The appellant is having $\frac{1}{4}$ share in the said bungalow and therefore, it will take care the amount due to the respondent no.1, as and when this appeal will decide.

5] The learned counsel for the respondents, however, submitted that the respondent no.1 is also requires some amount in cash, as more than 22 years have elapsed after filing of the suit and especially when the total amount comes to Rs.32,00,000/-.

6] In view thereof, the learned counsel for the appellant submitted that the appellant will be depositing the amount of Rs.10,00,000/- in this Court and furnish the bank guarantee of Rs.5,00,000/-. In my considered opinion, this will be just and reasonable amount, having regard to the attachment of the bungalow of the appellant, at this stage, to grant the stay to the execution of the impugned judgment and decree.

7] Accordingly, the stay is granted to the execution of the impugned judgment and decree subject to the appellant depositing the cash amount of Rs.10,00,000/- in this Court within six weeks from the date of this order and also furnish the bank guarantee of Rs.5,00,000/- within the said period.

8] The respondent no.1 is permitted to withdraw the amount of Rs.10,00,000/- subject to giving the undertaking that in case the decision of the appeal goes against the respondent no.1, the respondent no.1 will return the said amount with interest.

9] Civil Application is disposed of accordingly.

(DR.SHALINI PHANSALKAR-JOSHI, J.)