

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

WRIT PETITION NO.5992 OF 2015

[Kishore s/o Gangadhar Pendharkar .vs. Chhaya w/o Gopal Rangbhai and others]

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

Court's or Judge's orders

CORAM : PRASANNA B. VARALE, J.
DATED : FEBRUARY 10, 2016.

Heard Mr. V.R. Borkar, the learned counsel holding for Mr. I.S. Charlewar, the learned counsel for the petitioner and Mr. R.N. Ghuge, the learned counsel for the respondent no.1. The respondent nos.2 to 9 though served and are being represented through the counsel, none appears on behalf of them, as the notice of final disposal was issued by this Court, by order dated 28.10.2015 and as a limited controversy involved in the present petition, the petition is heard and decided with the consent of the learned counsel for the parties.

The petitioner, who is unsuccessful party in Regular Civil Suit No.238/2004 and the suit was decreed in favour of the respondent no.1, being aggrieved by the judgment and order, an appeal was preferred by the petitioner before the learned District Judge-1, Washim. The petitioner-appellant submitted an application under Order 41 Rule 5 of the Code of Civil Procedure, seeking stay to the effect and operation of the judgment and decree. The application was opposed by the respondents. The learned District Judge-1, Washim, on hearing the parties

and on the backdrop of the judgment of this Court, directed the petitioner-appellant to deposit the decretal amount with interest and costs in the executing Court within stipulated period. While allowing the application, the learned District Judge-1, Washim further directed the petitioner-appellant to deposit Rs.50,000/- in the Court towards the surety of appeal. It was the submission of the learned counsel for the petitioner-appellant that the petitioner-appellant has raised various substantial grounds and the petitioner-appellant, being a small businessman, ought not to have been directed to deposit the decretal amount along with interest and surety to the tune of Rs.50,000/-. The learned counsel for the petitioner-appellant relied on the emphasis with submission that appeal be the continuation of the proceeding. There was no reason for the learned District Judge-1, Washim to direct the petitioner-appellant to deposit the amount of Rs.50,000/- towards the surety of appeal.

Mr. Ghuge, the learned counsel for the respondent no.1, in support to the order passed by the learned District Judge-1, Washim, submits that the appellate court, while exercising its power, can certainly direct the party to deposit the surety and there is no provision for not directing the party to deposit the surety. He further submits that the decree holder will have to wait for a longer period where fruits of the lawful order in his favour and attempt of the petitioner-appellant is nothing but to prolong the proceedings. As the learned District Judge-1, Washim allowed the application and granted the stay in favour of

the petitioner-appellant, the only controversy is in respect of a direction to deposit the decretal amount along with interest and amount of Rs.50,000/- towards the surety of appeal within the stipulated period, the direction to deposit the amount of Rs.50,000/- towards the surety of appeal. Though the learned counsel for the respondent no.1 supports that Clause in order in respect of surety, this Court, on the backdrop of the fact that the petitioner-appellant is already directed to deposit the entire decretal amount along with the interest and the petitioner-appellant, being a small businessman, a direction to deposit the amount towards the surety of appeal would not be justified. Learned District Judge-1, Washim also took a lenient view while allowing the application and directing the petitioner-appellant to deposit the entire decretal amount with interest within a period of three months. Thus, no fault can be found with even the order directing the petitioner-appellant to deposit the entire decretal amount along with the interest and costs.

Considering the submission of the learned counsel for the petitioner-appellant that the petitioner-appellant being a small businessman and the decretal amount along with interest is to the tune of nearly Rs.87,000/-, the interest of justice can be served by extending the time limit and permitting the petitioner-appellant to deposit the entire decretal amount along with interest within the prescribed time frame. Thus, the petition is disposed of with liberty to the petitioner-appellant to comply with Clause (2) of the order passed by the learned

District Judge-I, Washim by **30.4.2016** i.e. by extending the period, which was of three months, as per Clause (2). The Clause (3) i.e. the direction to deposit the amount of Rs.50,000/- towards the surety of appeal is quashed and set aside. The petitioner-appellant had deposited an amount of Rs.25,000/- in this Court, in view of the order passed by this Court, dated 28.10.2015. The petitioner-appellant is permitted to withdraw the said amount and deposit the entire amount in the executing court by **April 30, 2016**. Needless to state that no further extension would be granted. The petition is disposed of in above terms.

JUDGE

Gulande