

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

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C.R.P.NO.931 OF 2016

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ORDER

Heard the counsel for the petitioner at the stage of admission.

2. The unsuccessful defendant in a suit for recovery of amount, is the petitioner herein. Aggrieved by the judgment and decree of the trial court, he filed appeal before the lower appellate court and pending the appeal, sought stay as there is threat of execution of the money decree and the lower appellate court by the impugned order, granted ad interim stay of the judgment and decree of the trial court, subject to deposit of 1/3rd of the decretal amount and the plaintiff-decree holder was permitted to withdraw the same without any application. Assailing the same, the present revision is filed.

3. The learned counsel for the petitioner contended that without any supporting material, the trial court decreed the suit and there are good grounds for the petitioner to succeed in the appeal and that if the decree-holder is permitted to withdraw the amount, it would be difficult to recover the amount and therefore, sought to set aside the impugned order

4. The trial court after appreciation of the material evidence available on record, decreed the suit and the petitioner / defendant filed appeal and pending the same, sought stay of the impugned judgment of the trial court. The grounds raised by the defendant would be considered in the appeal and having regard to the facts and circumstances, the lower appellate court in exercise of its jurisdiction, while dispensing issuance of notice to the respondent / decree holder, granted ad interim stay, subject to condition of depositing of 1/3rd of the decretal amount and the decree holder was permitted to withdraw the same without any application. The apprehension of the petitioner cannot be appreciated. Already there is a decree in favour of the plaintiff and in the appeal, even without issuing notice to him, stay was granted and, therefore, in these circumstances, considering the balance of convenience, the lower appellate court, in my considered view, rightly exercised the discretion and granted conditional order and I do not find any justifiable reason to interfere with the same. The revision is devoid of any merits and the same is dismissed. No costs.

5. Miscellaneous petitions pending if any, shall stand closed.

AVS

19—02—2016