

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Civil Application [CAS] No.300 of 2017
IN
Second Appeal No.192 of 2017
[Mohansing Khirusing Chavan Vs. Sau. Shobha Govindbhai Verma]

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

Court's or Judge's orders

Mr. S. U. Nemade, Adv., for the applicant-appellant.
Mr. R. S. Kothari, Adv., for respondent.

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CORAM : A. S. CHANDURKAR, J.

DATE : 14th August, 2017

By this application, it is prayed that the decree for specific performance passed in favour of the respondent that has been maintained by the appellate Court be stayed during pendency of the appeal.

It is submitted that initially against the decree passed by the trial Court, First Appeal No. 39 of 2006 was filed in this Court. On 1st August, 2006, the execution of the decree was stayed by imposing the following conditions:-

“1] The appellant shall deposit in this Court

the amount of Rs.75,000/- received by him as an earnest money along with interest thereon @ 6% per annum from 4.4.2001 till the date of deposit within a period of four weeks. Upon deposit being made, the same shall be invested in Fixed Deposit in any Nationalised Bank initially for the period of 37 months to be renewed from time to time till disposal of the appeal.

- 2] The respondent is at liberty to withdraw the amount of Rs.3,00,000-00 deposited by him in the trial Court upon furnishing security to the satisfaction of the trial Court with undertaking that in the event the appeal is dismissed or stay is vacated he shall deposit the amount of Rs.3,00,000/- with interest @ 6% per annum thereon in the trial Court.
- 3] The appellant shall deposit the amount of Rs.2,000/- in this Court on or before 10th of every month starting from September, 2006 till disposal of the appeal. At the end of one year, the said amount shall be invested in Fixed Deposit in any Nationalised Bank initially for the period of one year to be renewed from time to time till disposal of the appeal.
- 4] The appellant shall not change the nature of the suit property nor shall create any further interest or encumbrance in respect of the suit property and file undertaking to that effect within a period of four weeks."

It is then submitted that this order was challenged by the appellant by approaching the Honourable Supreme Court. On 20th November, 2006,

Condition No.3 came to be deleted by maintaining Condition Nos. [1], [2] and [4]. It is, therefore, submitted that stay be granted on the aforesaid terms.

Shri Kothari, learned counsel for the non-applicant, submits that as the non-applicant has succeeded in both the Courts, Condition No. [3] as imposed earlier ought to be restored by enhancing the amount of deposit. It is further submitted that as sale-deed is executed in favour of the non-applicant, the stay does not deserve to be granted. He also submits that the applicant is not residing in the suit house.

Both the parties have filed affidavits contesting the claims made by the other side. Considering the nature of decree passed, I find that by imposing the same conditions on the basis of which the stay was granted on 1st August, 2006, the execution of the decree can be stayed. Accordingly, following order is passed:-

ORDER

[a] The execution of the decree for specific performance shall remain stayed during pendency of the appeal on the applicant's compliance with Condition Nos. 1,2 and 4 of the Order dated 1st August, 2006.

[b] Liberty is granted to the non-applicant to seek

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early hearing of the appeal.

Civil Application is disposed of.

Judge

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