

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

C.A.F. NO.3445/2017 IN FIRST APPEAL NO. 916/2014
 (KRISHNA RABGHUNATH MALKHEDE (DEAD) THR. LR'S BABAN KISANJI MALKHEDE & OTHERS
VERSUS HARIDAS LAXMAN DESHBHRATAR & OTHERS)

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

Court's or Judge's orders

 Shri A.D. Bhate, counsel for the applicants/appellants.
 Shri S.A. Kalbande, counsel for the NA-2/R-2.

CORAM : S.B. SHUKRE, J.

DATE : OCTOBER 04, 2017.

Heard Shri A.D. Bhate, learned counsel for the appellants and Shri S.A. Kalbande, learned counsel for the respondent nos.1 and 2. Nobody appears for the respondent nos.3 and 4, though duly served.

This is an application for grant of stay. The appellants, by this application have also shown their willingness to deposit entire decretal amount within time stipulated by this Court. Learned counsel for the appellants submits that appellants are ready to deposit the entire decretal amount within one week from the order.

However, there is a stiff resistance to this application put up by learned counsel for the respondent nos.1 and 2, who are the claimants. He submits that execution proceedings are already filed and this application, at such a belated stage, has been moved only to stall the execution proceedings and that too after warrant of attachment of the properties of the appellants has been issued.

Learned counsel for the appellants submits that no warrant of attachment so far has been issued and what the appellants have received is notice of the execution proceedings.

Shri Kalbande also submits that after dismissal of the first application filed for grant of stay, this second application is not tenable in the eye of law. He places reliance on the judgment in the case of *Barkat Ali & Another Versus Badrinarain (Dead) by LRs.*, reported in **(2008) 4 SCC 615**.

In the case of *Barkat Ali*, it has been held that objection to the proceedings of an execution case must be raised before the preliminary stage comes to an end and if the judgment debtor raises an objection after conclusion of the preliminary stage and seeks to revert back to the earlier stage of the proceedings, the application cannot be entertained. It is also held that principles of *res judicata* apply not only in respect of separate proceedings but also generally apply at different stages of the same proceedings and therefore, the Court would be precluded to go into that question which is sought to be raised by subsequent application and which has been decided previously in the same proceedings.

There can be no doubt about the principles of law stated in *Barkat Ali* (Supra). But, those principles, as could be seen from the facts in the case of *Barkat Ali* (Supra), were applied to proceedings which related to execution case and the stages at which various objections were sought to be raised by the judgment debtor. These facts distinguish themselves from the facts in the instant case wherein, the issue of execution of a decree is not involved and what is

involved is only the need for staying the effect and operation of the decree or otherwise. Previously, interim stay was granted by this Court on a condition that within a certain period of time, entire decretal amount would be deposited, failing which, the stay application would stand dismissed without any reference to the Court. Dismissal of a stay application by which stay was sought as interim relief from the Court, would not attract principles of *res judicata*. The principles of *res judicata* would apply, as could be seen from the case of *Barkat Ali* (Supra), to those orders which decide the rights of the parties finally. By an interim order, rights of the parties cannot be and are never decided finally. Therefore, in my respectful submission, case of *Barkat Ali* would render no assistance to the learned counsel for the respondent nos.1 and 2 in the present case and accordingly I find that subsequent stay application, which only seeks an interim relief, is maintainable, after dismissal of the first application seeking similar relief.

By putting such a stiff resistance, it appears to me that the claimants, whose interest is being effectively and conveniently served by allowing the appellants to deposit the entire decretal amount in this Court, appear to be acting with some different agenda on their mind. They seem to be not very much interested in realization of the decretal amount and their interest appears to be lying somewhere else. Had it not been so, the claimants would not have taken such a strong objection to this application. Be that as it may, the fact remains that this application being tenable, needs to be considered on its own merits.

Considering the fact that now the appellants have expressed their willingness to deposit in this Court the entire decretal amount within a period of weeks time, I see no difficulty in allowing this application, for ultimately granting of such permission to the applicants to deposit amount would only subserve the interest of the claimants and also the cause of justice.

In view of the above, this application is allowed conditionally. The appellants are permitted to deposit in this Court the entire decretal amount within a period of one week from the date of the order and on such deposit being made, there shall be interim stay to the effect and operation of the impugned award till final disposal of the appeal. If no such deposit is made within the stipulated time, the stay application shall stand dismissed automatically without reference to the Court.

The civil application stands disposed of accordingly.

JUDGE

APTE