

HON'BLE SRI JUSTICE S.V.BHATT

CIVIL REVISION PETITION NO.6675 OF 2017

ORDER:

The appellants in A.S.No.10 of 2017 are the revision petitioners. The appellants filed I.A.No.199 of 2017 under Order 41 Rule 5 CPC praying for staying of the decree and judgment in O.S.No.76 of 2012, dated 01.03.2017. The appellate Court through the order impugned in the Civil Revision Petition declined to exercise its discretion or jurisdiction.

The counsel for petitioner though made a few submissions in favour of suspending the decree for perpetual injunction, but without success. The operative portion of the order impugned reads as follows :-

“The petitioners have filed a petition to suspend the (operation) of judgment and decree. It is the suit for relief of permanent injunction which was granted and the respondents are restrained. If the judgment and decree of the trial court is suspended, the chances of the petitioners taking advantage of the order of suspension are as strong as the alleged acts of the respondent taking advantage of decreeing of the suit by the trial court.

It is noticed that the appellant did not disclose filing of the execution petition by the respondent. Order 41 Rule 5, CPC, empowers the court to order stay of execution of the decree or any other proceedings. The petitioners have not stated whether this E.P. filed or any other proceedings are instituted by the respondent in the trial court. The appellate court cannot altogether turn around the judgment and decree of the trial court under Order 41 Rule 5 C.P.C. and grant an injunction order

which any effect will be in the nature of suspension of judgment and decree which is not clearly spoken of in Order 41 Rule 5, C.P.C., in my opinion is a relief that can be claimed when the decree is for the reliefs like delivery of the possession of the property, execution of the instruments etc. It cannot be restored in all cases more particularly in cases of perpetual injunction except when there exists special circumstances. In view of my above discussion, the petition is dismissed.”

I have perused the record and taken note of the findings recorded by the appellate court.

This Court is in full agreement with the findings recorded by the appellate court and no ground is made out for interfering with the order impugned in the Civil Revision Petition.

The Civil Revision Petition fails and is accordingly dismissed. The learned appellate Judge considers disposing of A.S.No.10 of 2017 as expeditiously as possible, preferably within six months from the date of receipt of a copy of this order, without referring to the findings recorded in the order under revision.

Miscellaneous petitions, if any, pending, shall stand closed.
No order as to costs.

S. V. BHATT, J

Dt: 24.01.2018
Prv

