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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.1908 OF 2016
IN
SECOND APPEAL NO.920 OF 2016

Nasir S. Patel	...Applicant
V/s.	
Yasmeen S. Patel	...Respondent

Mr.Dhiraj Gole i/b Mr.Madhav J. Jamdar for the Applicant.

Mr.Prabhanjan Gujar for the Respondent.

CORAM : R.D. DHANUKA, J.
DATE : 18TH OCTOBER, 2019.

P.C. :-

1. By this application the applicant seeks stay of the operation of the judgment and decree dated 14th July, 2010 passed by the learned 2nd Joint Judge Civil Judge, Senior Division, Satara in Special Civil Suit No.227 of 2002 and the judgment and decree dated 13th April, 2016 passed by the learned District Judge – 4, Satara in Regular Civil Suit No.223 of 2010.

2. The applicant does not dispute that insofar as the judgment and decree passed by the learned Trial Court in respect of the suit property described in paragraph 1-B of the plaint is concerned was not impugned by the applicant by filing any appeal before the learned Lower Appellate Court and thereafter by filing any cross-objection in the appeal filed by the original plaintiff. The decree

in respect of the suit property has attained finality. There is no question of granting any stay in respect of the property described in paragraph 1-B of the plaint against the defendant no.1.

3. Insofar as the property described in paragraph 1-A of the plaint is concerned, the original plaintiff has succeeded before the learned Lower Appellate Court. The Lower Appellate Court has passed a decree in respect of the entire property. The property described in paragraph 1-A of the plaint is about 3,000 sq. ft. residential premises. Mr.Gujar, learned counsel for the respondent submits that since the property is admeasuring 3,000 sq. ft. area and since his client has succeeded before the Lower Appellate Court, if this Court proposes to grant stay to the decree passed by the Lower Court insofar as the property described in paragraph 1-A is concerned, the applicant shall be directed to deposit reasonable amount.

4. Learned counsel for the applicant on the other hand submits that the taxes of the property being paid by his client is in the sum of Rs.478/- per year. The applicant is not willing to permit the respondent who has succeeded before the Lower Appellate Court to occupy part of the premises.

5. Considering the fact that the respondent has succeeded in the appeal filed by the respondent before the lower Appellate Court and the suit property admeasuring 3,000 sq. ft., I am inclined to

grant stay of the decree passed by the learned Trial Court insofar as the property described in paragraph 1-A of the plaint is concerned on depositing a sum of Rs.2,000/- per month by the applicant which shall commence from the date of the decree passed by the Lower Appellate Court. The arrears of the amount shall be deposited by the applicant within four weeks from today. The amount required to be deposited for the month of November, 2019 shall be deposited on or before 10th day of each month before this Court. The respondent would be at liberty to withdraw the said amount that would be deposited by the applicant by furnishing an undertaking to this Court to the effect that if the applicant succeeds in the second appeal, the respondent would refund the said amount with such interest as this Court may deem fit. Such undertaking shall be filed within two weeks from the date of the applicant depositing the entire arrears of amount. Undertaking shall be rendered also in respect of the amount that would be deposited by the applicant every month as directed by this order.

6. There shall be interim relief insofar as the property described at paragraph 1-A of the plaint is concerned during the pendency of the second appeal.

7. The civil application is disposed of on aforesaid terms. There shall be no order as to costs.

(R.D. DHANUKA, J.)