

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR

CAS NO.359/2017 IN SA NO.201/2017

Nirmalkumar Ramvilas Rathi

..VS..

Abdul Rasheed Bashir Ahmed

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

Court's or Judge's Order

.....
Shri S.N.Bhattad, Counsel for the Applicant/Appellant.
Shri R.J.Mirza, Counsel for the Respondent.

CORAM : V.M.DESHPANDE, J.

DATED : JULY 25, 2019.

1. This is an application for grant of Stay to effect and operation of impugned judgment and decree.
2. Heard learned counsel Shri S.N.Bhattad for the applicant/appellant and learned counsel Shri R.J.Mirza for the respondent.
3. A suit for recovery of Rs.2,55,000/- was filed by the respondent/plaintiff. The said suit was decreed by learned 2nd Joint Civil Judge Senior Division, Amravati. Against that, an appeal was preferred before this Court in view of pecuniary jurisdiction of the Courts. However, during the pendency of the said appeal, in view of enhancement of pecuniary jurisdiction of the Courts below, the appeal was transferred.
4. Be that as it may, when the present appeal was pending, this Court granted Stay in favour of the appellant/defendant directing the appellant/defendant to

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deposit Rs.1,50,000/- and accordingly the said amount was deposited before this Court. It is also pointed out to this Court that at the time of return of the memo of appeal to First Appellate Court at Amravati, amount of Rs.1,50,000/- was also transferred. Thereafter, learned Judge of Lower Appellate Court also dismissed the appeal filed on behalf of the appellant/defendant.

5. On 11.7.2018, the present appeal was admitted. On the present application for grant of Stay, *ad interim* Stay was granted.

6. On 25.9.2018, the respondent/plaintiff was allowed to withdraw amount Rs.1.00 lac on furnishing solvent surety to the satisfaction of the Registrar of the District Court.

7. Be that as it may, the appellant/defendant has suffered money decree at the hands of both the Courts below.

8. It is settled principle of law that in such situation unless an exceptional case is made out, normally Appellate Court should be slow in granting Stay to money decree. No exceptional circumstance is pointed out to this Court for Stay.

9. In this view of the matter, following order is passed:

ORDER

(i) The civil application is disposed of.

(ii) The appellant/defendant is directed to deposit balance decretal amount inclusive of interest before this Court within a period of 8 weeks from today.

(iii) It will be open for the respondent/plaintiff to file an appropriate application thereafter.

(iv) In the meanwhile, there shall be *ad interim* Stay in terms of prayer clause (1).

(v) It is made clear that relief of Stay of execution of the decree for 8 weeks is granted on a condition that the appellant/defendant shall deposit entire amount within 8 weeks from today. If it is noticed that within the stipulated period the amount is not deposited, the Court will take suitable action against the appellant/defendant.

JUDGE

!! BRW !!

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