

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

Second Appeal No.20 of 2022

Govindo Shaw @ Karmarkar s/o Laxman Shaw & another
vs.
Partho s/o Ashok Kumar Roy

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

Court's or Judge's Orders

Mr. A.M. Kukday, Advocate for the Appellants.
Mr. Shashank Savdekar, Advocate for the Respondent.

CORAM : MANISH PITALE, J.
DATE : 15th MARCH, 2022.

Heard Mr. A.M. Kukday, learned Counsel
 appearing for the appellants.

02] Since the records are already here and the learned Counsel for the appellants has placed on record the paper-book of the first appellate Court, the appeal can be considered for final disposal.

03] Issue notice to the respondent for final disposal on the following substantial questions of law :

- (i) Whether the judgment of learned appellate Court as well as the learned trial Court can be considered to be just and proper when both the learned Courts below have not appreciated the evidence on record in its proper perspective, which has resulted in allowing the suit and further dismissing the appeal preferred by the appellants?

- (ii) Whether the judgment and decree passed by the learned Courts below can be sustained when in evidence the respondent in cross-examination admitted that he had purchased property in Kolkatta from one Swapna Chakroborti and the cheques bearing Nos.43937 and 221764, dated 17/02/2011 and 28/12/2010 amounting to ₹9,00,000/- and ₹5,00,000/- respectively, drawn on Bank of Baroda matches/reflects with the memo of consideration in the Deed of Conveyance i.e. Exh.33?
- (iii) Whether the judgment of the learned Courts below can be sustained in view of the fact that the notice dated 01/08/2012 being Exh.42 and the said notice was sent before filing of the suit wherein an amount of ₹22,00,000/- was demanded and in the notice, it was mentioned that the said amount was given to the respondent for purchase of property from Swapna Chakraborty and the cheque numbers and amount mentioned in the written statement matches with the amount and cheque number mentioned in the Deed of Conveyance at Exh.33?

02] Mr. Shashank Savdekar, learned Counsel waives notice on behalf of the respondent.

03] Notice shall be returnable on 21st April, 2022.

Civil Application [CAS] No.40/2022 :

This is an application for seeking stay to the decree passed in favour of the non-applicant/respondent.

02] This Court has issued notice for final disposal in this appeal by framing substantial questions of law. Since, this is a money decree, stay can be granted subject to the applicants/appellants depositing some amount in this Court. It is an undisputed position that during pendency of the appeal before the first appellate Court, the applicants/appellants had deposited an amount of ₹5,00,000/-, which was withdrawn by the non-applicant/respondent.

03] In view of the above, there shall be stay to the decree passed against the applicants/appellants subject to the applicants/appellants depositing further amount of ₹5,00,000/- before the Executing Court within four weeks from today.

04] It is made clear that if the applicants/appellants fail to deposit the said amount within the stipulated period of time, the stay granted by this Court shall stand vacated without further reference to this Court.

05] The application is allowed and disposed of accordingly.

*sandesh

Signed by: SANDESH DAULATRAO
WAGHMARE
Private Secretary to the Hon'ble Judge
Signing Date: 16.03.2022 16:23

JUDGE