

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1228 OF 2019**

Shri. Sachin Ashok Sarode and anr.

.. Petitioners
(Orig.Plffs.)

V/s.

Smt. Ashabai Ashok Sarode & Ors.

.. Respondents
(Orig. Defds)

...

Ms. N.P. Boraste with Mr. Girish R. Agrawal, for Petitioners.

Mr. Jitendra H. Oak, for Respondents no.1 to 3.

Mr. Amrut M. Vernekar, for Respondent no.4.

...

CORAM : SANDEEP V. MARNE, J.

Dated : August 17, 2023.

P.C. :

1. By this petition, Petitioners challenge order dated December 15, 2018 passed by the District Judge-1, Niphad in Civil Appeal No. 68/2017 thereby allowing application filed by Respondents for stay of the judgment and decree dated December 1, 2014 passed by the trial Court in Special Civil Suit No.22/2008.

2. By its judgment and decree dated December 1, 2014, the Trial Court held the Petitioners entitled for an amount of Rs.10,47,331/- alongwith interest with a direction to Respondent no.1 to re-deposit the said amount of Rs.10,47,331/-.

3. Ms. Boraste, the learned counsel appearing for Petitioners would invite my attention to the order passed by this Court on September 22, 2009 in Appeal from Order No. 1229/2008 by which this Court had directed that in the event of Petitioners succeeding in the suit, Respondent no.1 shall repay the entire amount received by her. She was directed to file Affidavit to that effect. The learned counsel for Petitioner would draw my attention to the Affidavit filed by Respondent no.1 in this Court on September 18, 2019, by which she undertook to repay the entire amount of Rs.10,47,331/- in the event of the Petitioners succeeding in the suit. She would further submit that despite clear directions by this Court, the Trial Court granted stay to the judgment and decree of the Trial Court on deposit of only 25% amount, which would constitute violation of the order passed by this Court on September 22, 2009.

4. Mr. Oak, the learned counsel appearing for Respondents no.1 to 3 would oppose the petition and support the order passed by the Appellate Court. He would further submit that the Appeal itself is fixed for final hearing on August 22, 2023 and that therefore this Court may not interfere in the impugned order.

5. After going through the order passed by this Court on September 22, 2009 it does appear that Respondent no.1 specifically undertook before this Court to repay the entire amount of Rs.10,47,331/- in the event of Petitioners succeeding in their

suit. The Petitioners have succeeded in their suit which came to be decreed on December 1, 2014 and the Respondents have been directed to repay the entire amount of Rs.10,47,331/- by depositing the same in the trial Court. Therefore, it is highly doubtful as to whether the Trial Court was left with any discretion to reduce the amount to be deposited. By impugned order dated December 15, 2018, the Trial Court has permitted the Respondents to deposit only 25% of the decretal amount for granting stay to the effect and operation of the decree.

6. However it has now been eight years since the order of the Appellate Court was passed on December 15, 2018. In the meantime, the hearing of the Appeal has progressed and the same is now coming up for final hearing. In the light of this position, no purpose would be served in determining the merits of the order dated December 15, 2018. Therefore, though I am not convinced with the reasonings recorded by the Trial Court for reducing the amount to be deposited for grant of stay, I am not inclined to interfere in the order passed by the Appellate Court. The impugned order has operated for the last 5 long years. Since Appeal itself can be finally heard, no purpose would be served in now deciding whether Respondents should be directed to deposit the balance 75% of the amount. Instead, the Appellate Court can be requested to hear the Appeal expeditiously. Respondents shall not seek any further adjournment before the Appellate Court and shall co-operate with it for early decision of the Appeal.

7. The Writ Petition is accordingly **disposed of** with a request to the Appellate Court to expedite the hearing of the Appeal which shall endeavour to dispose it of as expeditiously as possible.

NEETA
SHAILESH
SAWANT

SANDEEP V. MARNE, J.

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NEETA SHAILESH
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Date: 2023.08.18
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