



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

WRIT PETITION NO.5967 OF 2023

Shri Mukund S/o Haribhauji Sathfale .Vs. Shri Santosh S/o Manoharrao Hirulkar

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mrs. D.I. Charlewar, Advocate for petitioner.

CORAM : ANIL S. KILOR, J.

DATED : 07/09/2023

1. The stay granted by the learned lower appellate Court vide order dated 05.07.2023, to the judgment and decree dated 06.01.2022 passed in Special Civil Suit No.683 of 2013 by the 11th Jt. Civil Judge, Senior Division, Nagpur directing to execute sale deed in favour of respondent herein, is under challenge in this petition.

2. The learned lower appellate Court while allowing the application for stay has observed thus:

11. I perused the entire record, more particularly evidence available on record and impugned judgment and decree. There is need to appreciate evidence of the witnesses which is available on record afresh as it is pointed out how the learned trial Court has failed to appreciate this evidence in true sense. Meanwhile, if impugned judgment and decree is executed the defendant would suffer irreparable loss, or there would be substantial injury to him. Therefore, there is not to stay the execution of the judgment and decree, but said cannot be done without monetary condition as security to perform the decree if the appeal goes against the defendant.

12. Considering the amount of agreement to sell, it is appropriate to ask the defendant to deposit security of Rs.3,00,000/- to stay the execution of impugned decree as per Order 41, Rule 5(3), of the Code of Civil Procedure. Said security has to be furnished within one month from today. Meanwhile, for one month the executing Court can be requested not to proceed with the execution proceeding.”

3. After going through the above referred reason recorded by the learned lower appellate Court and the fact that, the stay was not unconditional but it is subject to furnishing of security of Rs.3,00,000/-, I do not find any error committed by the learned lower Appellate Court. Accordingly, the writ petition is **dismissed**.

4. The learned lower appellate Court is directed to expedite the suit.

JUDGE