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C.M.P.No.27267 of 2023

**C.M.P.No.27267 of 2023**

**in**

**S.A.No.862 of 2023**

**P.T.ASHA, J.,**

The plaintiff is the petitioner/appellant before this Court. The plaintiff had filed a suit in O.S.No.77 of 2005 on the file of the District Munsif Court, Vanur, seeking a declaration and recovery of possession.

2. The suit was decreed by judgment and decree dated 24.09.2013. Challenging the said judgment and decree, the third defendant had filed a appeal in A.S.No.5 of 2014 on the file of the Principal Subordinate Court, Tindivanam.

3. The learned Judge, by judgment and decree dated 10.08.2022, had allowed the appeal and set aside the judgment and decree dated 24.09.2013 in O.S.No.77 of 2005 and this judgment and decree dated 10.08.2022 is the subject matter of challenge before this Court.



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4. By reason of the reversal of the judgment and decree, the decree obtained in the suit filed by the plaintiff is set aside. Since there is no positive decree, this Court is at loss to understand as to what decree the petitioner/appellant seeks to stay. The reason for seeking stay has been elaborated in the paragraph no:13 in the affidavit filed in support of this petition which is as follows:

*“13. I further submit the defendant conveniently took mortgage loan from Taminadu Mercantile Bank and deliberately left the same to default. Now it is learnt that the Taminadu Mercantile Bank has instituted recovery proceedings by attaching the suit property. Hence it is become deem fit and proper to stay the operation of the decree in A.S.No.5 of 2022 dated 10.08.2022.”*

5.The decree that is sought to be stayed is the decree in and by



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which the Appellate Court has reversed the decree for declaration and recovery of possession by the trial Court and staying the operation of this decree will have no bearing on action taken by the Bank and further, this stay cannot in any way act as an obstacle to the Bank taking action for recovering their dues. Therefore, the stay petition lacks merits and dismissed. It is well open to the petitioner/appellant to move an appropriate petition.

**01.12.2023**

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