



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

946 APPEAL FROM ORDER NO. 11 OF 2024
WITH
CIVIL APPLICATION NO. 3578 OF 2024 IN AO/11/2024

1. Shaikh Nawab Shaikh Gulab ... APPELLANT

VERSUS

1. Gamir Shaikh Babu Gavali

2. Salahuddin Shaikh Babu Gavali ... RESPONDENTS

...

Mr. S.V. Dixit – Advocate for Appellant

Mr. A.J. Patil – Advocate for Respondent No.2

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CORAM : SANDIPKUMAR C. MORE, J.

DATE : 7th August, 2024

PER COURT :

1. Heard rival submissions.

2. The present appeal appears to be filed only against clause – (iii) of the operative order in impugned order dated 16.01.2024 passed below Exhibit – 5 in Regular Civil Appeal No. 33 of 2023 by the learned District Judge – 3, Jalgaon i.e. learned First Appellate Court.

3. Under the aforesaid clause – (iii), the present appellant was asked to deposit the arrears of rent and costs of the suit within the

period of one month from today. If the appellant fails to deposit the amount within the period of one month, the order of stay shall stand vacated automatically.

4. During the pendency of the appeal both the parties were ready for final hearing of the appeal at admission stage and therefore, time to deposit the aforesaid amount was extended from time to time. Admittedly, the rest of the order is in favour of the present appellant whereby execution of impugned decree passed by 2nd Joint Civil Judge Junior Division, Jalgaon (*“the learned Trial Court” for short*) in Regular civil Suit No. 89 of 2010 is stayed for the period of one year.

5. During the course of argument the learned Counsel for appellant was asked to take instructions from the appellant to deposit atleast half amount of the arrears of rent and costs of suit, which comes to around Rs.1,00,000/- (rupees one lac only). However, the appellant stated that, due to financial constrained he is unable to pay the same. It is to be noted here that, the learned First Appellate Court had granted stay in favour of appellant for protecting his possession over the suit property on condition that, he should deposit the entire arrears of rent alongwith the costs of suit. However, it seems that the appellant is not ready for the same and

even not ready for half of that amount. Under such circumstances and considering the conduct of appellant, the present appeal stands dismissed alongwith the pending Civil Application No. 3578 of 2024.

6. The Appeal from Order alongwith pending Civil Application is accordingly disposed of.

[SANDIPKUMAR C. MORE]
JUDGE