



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 8555 OF 2020

IN

SECOND APPEAL NO. 428 OF 2020

Kazi Syed Salahuddin s/o
Kazi Syed Nazirul Hasan

Applicant

Versus

Syed Shahbuddin Shuttari s/o
Syed Bahauddin Shuttari, Died
Through LRs

Respondents

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Mr. Vikrant Palsikar, Advocate for the applicant.
Mr. A.P. Bhandari, Advocate for respondent Nos.1-B (i) to
1-B-iii, 1-C to 1-F.

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CORAM : SANDIPKUMAR C. MORE, J.

Dated : 14 March 2024

Order :

1. Heard rival submissions. The appellant, who is the original defendant, is seeking stay to the execution, implementation and effect of the impugned judgment and decree dated 18.12.2004 passed by the learned Civil Judge, Junior Division at Aurangabad i.e. the learned trial Court, which has been confirmed by the learned District Judge-6, Aurangabad i.e. the learned first appellate Court in Civil Misc. Application No.308/2015 vide order dated 12.02.2020.

2. The record shows that the respondents/plaintiffs

had filed the aforesaid suit for possession of the suit property i.e. the portion admeasuring 25 x 140 sq. ft. out of municipal house No. 4-18-26 situated at Dargah Hazarat Syed Shah Ahmed, gujrathi Shuttari Kali Bawali, Mondha Road, Aurangabad. The said suit had been decreed on 18.12.2004. However, the present appellant, in the year 2015, challenged the said decree by filing First Appeal alongwith application i.e. Civil Misc. Application No. 308/2015 for condonation of delay of 3864 days. The learned first appellate Court has rejected the said application by observing gross negligence of the present applicant/appellant. Consequently the First Appeal filed by the present applicant/appellant has also been dismissed. Against that order dated 12.02.2020 of the learned first appellate Court, this Second Appeal is preferred.

3. It is significant to note that the First Appeal of the applicant/appellant remained unheard due to inordinate delay as stated above. The learned Counsel for the respondents pointed out that the appellant unnecessarily playing delaying tactics only to retain the suit property. According to him, the order of mesne profits has already been passed against the present appellant and for recovery of those mesne profits, which are to the tune of Rupees Twenty Six

Lakhs, execution proceeding is going on separately wherein attachment warrant is also issued against the appellant.

4. Thus, if the appellant is seeking equity from this Court for hearing him on merit by way of this Second Appeal, then he must do the same. Therefore, it would be proper to direct the applicant / appellant to deposit the entire amount of mesne profits for claiming the interim relief in this application. In view of the same, the application stands allowed in terms of prayer clause (B) subject to deposit of an amount of Rupees Twenty Six Lakhs in Regular Darkhast No. 54/2023 which is pending before the learned Executing Court i.e. the 6th Joint Civil Judge (Senior Division), Aurangabad, within a period of two weeks. On failure of depositing the said amount, the stay order granted today shall stand vacated, without further reference to this Court.

(SANDIPKUMAR C. MORE, J.)