



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.6802 OF 2024.
IN
FIRST APPEAL NO.998 OF 2023.

Namita Shankarlal Agarwal ...Applicant-Appellant.
Versus
Freny F. Bhadha and Anr. ...Respondents.

Mr. Omar Khaiyam Shaikh a/w. Mr. Ansari Shahzed for the Applicant-Appellant.
Mr. Vishwajeet Kapse a/w. Freedy Kataya for the Respondents.

Coram : Sharmila U. Deshmukh, J.

Date : 28th August, 2024.

P. C. :

1. Interim Application has been preferred seeking modification of the order dated 30th November 2023. By the said order, Interim Application for stay came to be allowed subject to the applicant depositing 50% of the principal amount in this Court. The matter was carried to the Apex Court and the Apex Court by order dated 1st March 2024 permitted the applicant to approach this Court for modification of the condition.
2. During the hearing, learned counsel for the applicant reiterated the willingness to furnish an alternative security of depositing the original title deed of the suit flat along with undertaking that no third

party right shall be created till the disposal of the Appeal. He would further submit that pending adjudication of appeal no third party rights will be created in this proceedings.

3. Learned counsel for the decree-holder would submit that Appeal be taken up for hearing and it is not necessary to modify the order as the condition of 50% deposit directed by this Court will not be insisted upon and that he will not proceed with the execution. Statement made by learned counsel for the decree-holder, on instructions, would in fact amount to stay of the execution by consent.

4. In light of the above, learned counsel for the applicant submits that he is ready to proceed with the hearing of the First Appeal. In that view of the matter, there cannot be any further prosecution for non compliance of the order dated 30th November 2023 despite non compliance of deposit of 50% in view of the statement made by learned counsel for the applicant.

5. Interim Application is disposed of in above terms.

[Sharmila U. Deshmukh, J.]