



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

CIVIL APPLICATION (CAS) NO. 475 OF 2024
IN
SECOND APPEAL NO.74 OF 2024

Vandana Wd/o Bandu Thakre
..VS..
Shivshankar S/o Ganpat Chandekar

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. S.G. Karmarkar, Advocate for applicant/appellant.
Mr. Vikrant Pandey, Advocate for respondent.

CORAM : SANJAY A. DESHMUKH, J.

DATED : 20th JUNE, 2024

Corrected as per
Court's order
dt.25.07.2024.

This is an application for granting stay to the execution of Judgment and Decree passed by the learned District Judge, Nagpur in Regular Civil Appeal No. 39/2018.

2. Heard learned Counsel for the applicant/appellant and learned Counsel for the respondent.

3. Learned Counsel for the respondent strongly opposed the application and submitted reply-affidavit, which is taken on record and marked as "X" for identification.

4. Perused the impugned Judgment and Decree passed by trial Court as well as First Appellate Court. From the judgment of the trial Court particularly in para No.25, it is admitted by the plaintiff that he is residing in

suit house property since 1993. Considering this aspect, the application deserves to be allowed.

5. The application is **allowed**.

Corrected as per
Court's order
dt.25.07.2024.

6. The execution of impugned Judgment and Decree passed in **Regular Civil Appeal No.39/2018, passed by District Judge, Nagpur** is stayed till final decision of this appeal.

SECOND APPEAL NO.74 OF 2024

7. Heard the learned Counsel for both sides.

8. **ADMIT.**

9. Learned Counsel for the respondent waives service of notice for respondent.

10. Call for Record and Proceedings.

11. The judgment of the trial Court has been reversed by the Appellate Court. Considering the peculiar state of facts, following substantial questions of law is to be framed :-

- (i) Whether the lower appellate court is justified in reversing the judgment and decree passed by the trial court when there was no ground made out for reversing the judgment and decree passed by the trial Judge?
- (ii) Whether the findings recorded against the issue No.3 i.e. issue of limitation is perverse?

- (iii) Whether the lower appellate Judge recorded perverse findings to reverse the judgment and decree passed by the trial Judge?
- (iv) Whether the findings recorded by the learned lower appellate court against issue No.3 is based on evidence on record and in the light of the admitted facts that since 1982 the defendant is occupying the suit premises and the suit came to be filed on 13.08.2013 after the period of 12 years and therefore, the same is beyond the period of limitation?
- (v) Whether in a suit for possession on the contention that the defendant is occupying the suit premises on permissive occupation basis, the suit is maintainable without issuing quit notice and whether this important aspect of the matter has been lost sight of by the learned Judge of lower appellate Court?

12. Appeal be expedited.

13. As soon as the record and proceeding is received, the learned Counsel for the appellant shall submit the paper book and supply copy of it to the respondent.

14. Stand over after four weeks.

(SANJAY A. DESHMUKH, J.)