



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CIVIL APPLICATION (CAS) NO.711 OF 2024 IN
SECOND APPEAL NO.376 OF 2017

Sudha Wd/o Ashok Wasnik Vs. Kalpana Wd/o Janardhan Wasnik

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

Court's or Judge's orders.

Shri M.V. Rai, Advocate for appellant.
Shri S.R. Narnaware, Advocate for respondent.

CORAM : M.W. CHANDWANI, J.

DATE : 27.08.2024.

By this application, the appellant is praying for stay to the execution of judgment and order dated 17.03.2016 passed by the learned District Judge-11, Nagpur in Regular Civil Appeal no.257/2014 and the judgment and decree dated 03.05.2014 passed by the learned 19th Joint Civil Judge Junior Division, Nagpur in Regular Civil Suit no.1731/2012, whereby the appellant has been directed to hand over the possession of the suit property to the respondent.

2. This Court, while issuing notice for admission, framed two substantial questions of law vide order dated 12.03.2018 and directed the parties to maintain *status quo*. It is matter of record that alongwith Second Appeal an application for stay was filed however, due to non-prosecution by the appellant, said application came to be dismissed in default vide order dated 22.02.2019. Thereafter, second application

for stay came to be filed on 05.02.2022, however, on 13.03.2023, under misconception the counsel for the appellant informed the Court that decree has been executed, said application came to be disposed of.

3. Now, by this application, it is contended that the said statement made by the learned counsel for the was under misconception of fact. According to the appellant, decree has not been executed till date. This position has not been disputed by the respondent.

4. The learned counsel for the respondent vehemently objected the application mainly on the ground that the application made by the appellant came to be dismissed on 22.02.2019 therefore, other application filed by the appellant will be hit by the principle of *res judicata* and the both Court below are against the appellant. It is also submitted that second application also came to be disposed of. Therefore, subsequent application for stay is not maintainable.

5. It is settled position of law that principle of *res judicata* will be applicable when the matter has been heard on merits. It is a matter of record that first stay application was dismissed in default for non-prosecution. Second application came to be disposed of on the incorrect fact that decree has been executed, therefore, I do not find substance in the argument of the learned counsel for the respondent that present application for stay is not maintainable.

6. Since, the decree is for possession and this Court has already admitted the Second Appeal after framing substantial questions of law and had protected the appellant, a case is made out for stay. Hence, pending second appeal, there shall be stay to the execution and implementation of judgment and decree dated 17.03.2016 passed by the learned District Judge-11, Nagpur in Regular Civil Appeal no.257/2014 and also the judgment and decree dated 03.05.2014 passed by the learned 19th Joint Civil Judge Junior Division, Nagpur in Regular Civil Suit no.1731/2012.

7. The application is disposed of.

8. List the second appeal for final hearing in the week commencing from 23rd September, 2024.

JUDGE

Wagh