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A.Nos.1584 and 1585 of 2024 in
E.P.No.50 of 2023

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N.SATHISH KUMAR, J.

The Application No.1584 of 2024 has been filed against the order passed by the learned Master, wherein the learned Master permitted sale of the property by the Assistant Registrar and the Application No.1585 of 2024 has been filed seeking stay of the said order passed by the learned Master.

2. The suit has been decreed for specific performance in respect of the 5/6th share in the suit property. The Decree and Judgment directs the defendants 2 to 5 and 7 to 9 in the capacity of the shares in 1/6th share of the deceased 1st defendant to execute and register the sale deed in respect of the 5/6th share in favour of the plaintiff. Pursuant to the said decree, Execution Petition has been taken by the decree holder and it is also stated that the amount of Rs.5,11,66,667/- [Rupees five crores eleven lakhs sixty six thousand and six hundred and sixty seven only] has been deposited besides draft sale deed and it is also approved on 16.11.2023.



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3. The Execution Petition has been resisted before the learned Master on the ground that the appeal has been preferred. However, the learned Master holding that number of the appeal has not been given and further, unless there is a stay by the appellate court, mere filing of the appeal is not automatic stay, directed the Execution of the sale deed by the Assistant Registrar. The learned Master has also recorded the fact that on 04.10.2023, the learned counsel appearing for respondents 2 to 9 submitted before the learned Master to the effect that they are ready to execute the sale deed. Thereafter, it appears that the respondents took a U-Turn and resisted the Execution, challenging the order of the learned Master, directing the execution of the sale deed by the Assistant Registrar, stating that, now, the appeal has been filed. Further, it is the contention that the decree does not direct the defendants 7 to 9 to execute the sale deed, therefore, the Execution Petition filed seeking for execution of the sale by the other respondents is not valid.

4. I have heard the contentions on either side and perused the entire materials placed on record.



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5. Now, it is brought to the notice of this Court that in fact, the application has been filed in C.M.P.No.6054 of 2024 in O.S.A.Sr.2718 of 2024 and in the said petition, only notice has been ordered by the Hon'ble Division Bench of this Court.

6. The above facts would indicate that appeal is not even numbered and the application has been filed only for condonation of delay alone is pending. Therefore, this Court is of the view that the contention of the learned senior counsel that the learned Master recorded incorrect details, has no legs to stand.

7. Be that as it may, even appeal is numbered as on date, as stated by the learned counsel, the same will not automatically stay all the proceedings. As per Order 41 Rule 5 of Civil Procedure Code, Appeal shall not operate as a stay of the proceedings under the decree or order. Therefore, mere pendency of appeal will not amount to automatic stay.

8. As far as the other contention that the Decree does not direct the



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defendants 7 to 9 to execute the sale, is not factually correct. The Learned Single Judge Judgment makes it very clear that specific performance is granted only in respect of 5/6th share in the entire suit property and the defendants 2 to 5 and the defendants 7 to 9 are also directed to execute the sale deed in respect of 5/6th share, therefore it cannot be stated that execution petition is beyond the decree or Judgment.

9. In such view of the matter, I do not find any merits in the applications, in the event of applicant succeeds in the appeal, the remedy lies for the applicant to seek restitution, as per Section 144 of C.P.C., and such right is very much available and provided under the statute itself. At this stage, the Execution Petition cannot be stalled.

Accordingly, the applications are dismissed.

19.03.2024

ssd



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