



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

WRIT PETITION NO. 6401 OF 2024

Sau. Ashatai Tulsiramji Thakre

Aged about 78 years, Occ.-Household,
R/o. Ghutkala Ward, Chandrapur,
Tah. and District Chandrapur.

.... **PETITIONER**

// **VERSUS** //

Jayant S/o Janardhan Gangreddiwar,

Aged about 69 years, Occ.-Retired,
R/o. C-3, Shrushti Shankul, Behind
Bhole Petrol Pump, Nagpur.

.... **RESPONDENT**

Mr. Anup S. Dhore, Advocate for the Petitioner.
Mr. Ashok P. Raghute, Advocate for the Respondent.

CORAM : SMT. M.S. JAWALKAR, J.

DATE : 24th APRIL, 2025.

ORAL JUDGMENT :

1. **RULE.** Rule made returnable forthwith. Heard finally with the consent of the learned Counsel appearing for the parties.

2. Present Petitioner is original plaintiff in Special Civil Suit No.29/2011. The said suit was decreed on 12.05.2023 directing defendant/Respondent to pay an amount of Rs.5,25,000/- along with interest @ 18% per annum. The said

Judgment and order challenged by the defendant/Respondent before the learned District Judge along with Application Exhibit-5 for stay. Learned District Judge allowed the Application Exhibit-5 on 17.08.2024.

3. By this Petition, the Petitioner is challenging the order dated 17.08.2024 passed Below Exhibit-5 by the learned District Judge-3, Chandrapur in Regular Civil Appeal No.65/2023.

4. It appears that learned District Judge-3, Chandrapur passed the order Below Exhibit-5 before issuing notice to the Respondent/Petitioner herein. The said order came to be passed on 17.08.2024, wherein Clause-1 of the operative order reads as “The application below Exhibit-5 is allowed”. The learned District Judge in second Clause in the operative order, directed the appellant to deposit bank guarantee of Rs.5,00,000/- in the Court, till the appearance and filing of say by the respondent/original plaintiff. Thereafter, in Clause-3 in the operative order, notice was issued to the respondent/original plaintiff. As such, the judgment and decree is not stayed till the decision of the appeal.

5. It is the contention of the learned Counsel for the Respondent that though it is mentioned as Exhibit-5 is allowed, subsequent clauses shows that the application is not finally decided. In my considered opinion that there is no ambiguity in the order, however, Clause-1 of the operative order makes an impression that Exhibit-5 is allowed. It is therefore necessary to direct the learned District Judge-3, Chandrapur to hear the Application Exhibit-5 as Respondent has filed his reply to the said application as informed by the learned Counsel for the Petitioner.

6. As such, the Writ Petition stands disposed of with direction to the learned District Judge-3, Chandrapur to decide the Application Exhibit-5 after granting due opportunity to the parties. The Application Exhibit-5 is decided within a period of one month.

The Writ Petition stands disposed of in the above terms. No order as to costs.

(SMT. M.S. JAWALKAR, J.)