



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

CIVIL APPLICATION (C.A.F.) NO.2490/2024

IN

FIRST APPEAL NO.768/2024

(Shri Harish S/o Santhanam Muthukrishnan and others Vs. Shri Dinesh S/o Bhagchand Kochar)

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

Court's or Judge's orders

Mr. Akhtar Nawab Nabi Mohammed Ansari, Advocate for the appellants.
Mr. Palash R. Chakole, Advocate for the respondent.

CORAM: MRS.VRUSHALI V. JOSHI, J.

DATED: 22.8.2025.

The appellants have filed this application to stay the effect and operation of judgment and decree dated 25.10.2023 passed by the 2nd Joint Civil Judge, Senior Division, Nagpur in Special Civil Suit No.805/2011.

2. The suit filed by the respondent for recovery of Rs.1,76,24,700/- along with interest at the rate of Rs.18% per annum from the date of suit. Suit was partly decreed and appellants-original defendants were jointly and severally directed to pay Rs.1,76,24,700/- with interest at the rate of 6% per annum from the date of filing of suit till realization.

3. The facts, in brief, are as under:-

4. The appellants-original defendants have purchased the land i.e. suit property for consideration of Rs.2,34,99,600/- by registered sale deed dated 26.9.2007. Defendants paid Rs.12,50,000/- as an earnest amount and Rs.46,24,900/- by cheque dated 26/9/2007 and agreed to pay balance amount of Rs.1,76,24,700/- to the plaintiff within one year from the date of execution of registered sale deed i.e. on or before 26.9.2008. The plaintiff repeatedly demanded the amount but

it was not paid. Hence, he has issued the notice on 4.5.2011 demanding the remaining consideration. Though the notice was served on the defendants, they have not paid the balance amount. Therefore, the plaintiff has filed the suit for recovery of said amount with interest.

In said suit, the defendants have filed a counter claim. According to the defendants, it was not informed by the plaintiff that the suit property is reserved for play-ground in the development plan in the year 2011. It was represented by the plaintiff that he was the owner of the suit property and there is a temporary structure of 186 Sq. Meters. Defendants denied that title over the property remained with the plaintiff. Defendants have stated that they are ready to pay the balance amount if dispute is resolved by the plaintiff and title of the suit property is cleared and if they get sanction for construction.

According to the plaintiff, the possession of the suit property was handed over to the defendants and defendants are in use, occupation and possession of the suit property as owners. Their names were mutated as per Entry No.2521 dated 16.10.2007. Their names were mutated in City Survey vide Entry No.2435 and the defendants constructed compound wall around the suit property to protect the same from encroachment. The defendants have paid the taxes and submitted the plan for construction to the Nagpur Municipal Corporation on 11.1.2008, however, Nagpur Municipal Corporation raised an objection that the suit property is a part of Khasara No.80/1 and bears City Survey No.2426 and the land is reserved for proposed play-ground in the development plan in the year 2001. As dispute as to title was created by Nagpur Municipal Corporation, the plaintiff is under an obligation to clear the title of

the suit property and then only the defendants are ready to pay the amount if the plaintiff clears the title of the suit property.

5. After considering the oral and documentary evidence on record, 2nd Joint Civil Judge, Senior Division, Nagpur has partly allowed the suit directing the defendants to pay the balance amount along with interest to the plaintiff. The cross objection filed by the appellants-defendants is rejected by the trial Court. The appellants have challenged the said money decree before this Court.

6. While issuing the notice, this Court on 23.8.2024 has granted ad interim stay to the execution of said judgment and said stay is operating since last one year.

7. The respondent appeared before this Court and filed the reply and opposed the application stating that the money decree can be stayed only if an exceptional strong case is made out and that too with a direction to deposit the entire decretal amount in Court. He has stated that in money decree the appellants are bound to deposit entire amount of decree in Court to pay it to the decree holder. Since the decree is a money decree there is no question of any substantial loss being caused to the appellants in the event decree is executed. The appellants have not mentioned about any substantial loss being caused to them and there is no categorical statement as to how in case, the execution of decree impugned in this appeal is not stayed, the appellants will suffer substantial loss.

8. The respondent has relied on the judgment in case of *Bhogvati Sakhar Karkhana Limited V/s. M/s. Chaugule and Sons* reported in **2003(2) MH.L.J. 562**. The Hon'ble Apex Court in Special Leave to Appeal (C) No(s).11760-11761/2018 (Manish V/s. Godawari) decided on 16.7.2018 has set aside the order passed by the Bombay

High Court directing to deposit 60% of decretal amount during the pendency of appeal and directed to deposit 100% decretal amount. In case of *Malwa Strips Pvt. Ltd. V/s. Jyoti Ltd.* reported in **2009 (5) Mh.L.J.13** the Hon'ble Supreme Court has observed that an exceptional case has to be made out for stay of execution of money decree. A strong case should be made out for passing an order of stay of execution of decree in its entirety. The respondent has further relied on the judgment of Gujarat High Court in the case of *Shah Kesharichand V/s. Ketan Babubhai* reported in **1998 SCC OnLine Guj.236** in support of his argument that no substantial loss is likely to be caused to the appellants if the stay is not granted. Hence, prayed to vacate the ad interim stay by rejecting this application.

9. Heard learned Advocates for the parties and perused the record.

10. Order XLI Rule 1(3) of the Code of Civil Procedure provides that in an appeal against the decree for payment of amount, the appellant shall within time permitted by the Appellate Court, deposit the amount disputed in the appeal or furnish the security in respect thereof as the Court thinks fit. Under Order XLI Rule (5) a deposit or security as above-stated is a condition precedent for an order by the Appellate Court staying the execution of a decree.

11. A bare reading of the provisions referred hereinabove shows a discretion having been conferred on the Appellate Court to direct either deposit of the amount disputed in the appeal or to permit such security in respect thereof being furnished as the Appellate Court may thinks fit. Needless to say that the discretion is to be exercised judiciously and not arbitrarily depending on the facts and circumstances of the case.

12. The learned Advocate for the appellants has stated that the property which the appellants have purchased is in possession of respondent. The respondent has no clear title over the property. The fraud is committed by the plaintiff. The suit property itself is the surety. It can be treated as surety furnished by the appellants instead of depositing the amount. The learned Advocate for the appellants has relied on the judgment of the Hon'ble Apex Court in case of *Sihor Nagar Palika Bureau V/s. Bhabhlubhai Virabhai & Co.* reported in **(2005) 4 SCC 1** wherein it is observed by the Hon'ble Apex Court that the furnishing of surety instead of deposit of amount in Court can be permitted if the appellants have made out a *prima facie* strong case for the hearing of the appeal on the merit and further in case the public interest would be better served by the amount being retained with the appellants during the pendency of the appeal.

13. The learned Advocate for the appellants has put-forth the proposal towards the respondent that the appellants are ready to hand over the possession of the property and will not ask for the amount which they have paid earlier and to settle the matter.

14. The respondent is not inclined to accept the said offer and has stated that as the money decree is challenged by the appellants, it is necessary to deposit the entire decretal amount. He has placed reliance on the judgment of the Hon'ble Apex Court in case of *M/s Mehta Teja Singh and Company V/s. Grindlays Bank Limited* reported in **(1982) (3) SCC 199** wherein it is held that even a direction to deposit the part of the decretal amount is not sufficient for grant of stay in case of money decree. This Court in case of *Sau. Aloka*

Jaigopal Biswas V/s. Dalia and another reported in **2018 SCC OnLine Bom 4051** has observed in paras 5 and 6 as under:-

“5. I have gone through the impugned order and I find that it does not give any adequate reason for taking such a lenient view in the matter. After all, what is under challenge is a money decree and the settled law is that money decree should not be ordinarily stayed unless some exceptional reasons are given. Even in the case of Sihor Nagar Palika Bureau (supra) relied upon by the learned Counsel for respondent No.1, this principle of law has been stated in clear terms, when it is observed by the Hon’ble Apex Court in paragraph 5 thus:

“5..... Ordinarily, execution of a money decree is not stayed inasmuch as satisfaction of money decree does not amount to irreparable injury and in the event of the appeal being allowed, the remedy of restitution is always available to the successful party. Still the power is there, of course, a discretionary power and is meant to be exercised in appropriate cases.”

6. In the case of Malwa Strips Private Limited V/s. Jyoti Limited, (2009) 2 SCC 426, the Hon’ble Apex Court has held that even though there is a discretion for staying the execution of the decree, by imposing suitable conditions, the discretion must be exercised judiciously. Speaking on the discretion of the Appellate Court to impose conditions, the Hon’ble Apex Court said that the provision may not be mandatory, but the purpose for which the provision has been inserted must be taken into consideration and an exceptional case has to be made out for stay of execution of a money decree. The Hon’ble Apex Court has held that the question of causing of undue hardship to the respondent must be appropriately answered by the Court granting stay. The relevant observations, as they appear in paragraph 14, of the judgment are reproduced thus:-

“14. Even if the said provision is not mandatory, the purpose for which such a provision has been inserted should be taken into consideration. An exceptional case has to be made out for stay of execution of a money

decree. The parliamentary intent should have been given effect to. The High Court has not said that any exceptional case has been made out. It did not arrive at the conclusion that it would cause undue hardship to the respondent if the ordinary rule to direct payment of the decretal amount or a part of it and/or directly through the judgment debtor to secure the payment of the decretal amount is granted. A strong case should be made out for passing an order of stay of execution of the decree in its entirety.”

15. The appellants have submitted that they have kept their immovable property with the respondent as a security, there is no need to deposit the decretal amount as they are having good case, the property which the plaintiff has sold is in dispute and the title of the plaintiff is not clear, therefore, the respondent-plaintiff has not accepted the proposal given by the appellants-defendants.

16. I have considered the judgment of the trial Court. The trial Court has considered the contents of the documents and order passed by the Municipal Corporation. The counter claim of the appellants-defendants is rejected by the trial Court.

17. As the money decree is challenged by the appellants and from the judgments on which the appellants are relying, it is clear that it is the discretion of the Court to grant stay against money decree. The respondent has rightly pointed out that the Hon'ble Apex Court has observed that the furnishing of surety instead of deposit of amount in Court can be permitted if the appellants have made out a *prima facie* strong case for the hearing of the appeal on the merit.

18. In facts and circumstances of the present case and having taken into consideration all respective submissions made by both the parties, it appears that though the sale deed is executed in favour of

the appellants and they have paid the Municipal Taxes, Mutation Entry is cancelled and the suit property is in dispute.

19. The appellants have given a fair offer of returning back the property and is ready not to claim the amount which the appellants have paid. Said offer is denied by the respondent which makes a strong *prima facie* case for appellants. As the Court has to use discretionary power and the same is meant to be exercised in appropriate cases, I am satisfied that the *prima facie* case is made out to grant stay for execution of decree subject to furnishing bank guarantee of decretal amount within a period of four weeks.

20. The stay granted by this Court vide order dated 23.8.2024 to continue till the final disposal of the appeal subject to following condition.

21. If the appellants fail to furnish bank guarantee within a stipulated period, the stay shall be automatically vacated.

22. The appeal is expedited.

23. The appellants are directed to file private paper book within a period of eight weeks from today.

24. List the matter for final disposal after eight weeks.

(MRS.VRUSHALI V.JOSHI, J.)