

**CNR NO.MHSCA10001492018**

**IN THE COURT OF SMALL CAUSES AT MUMBAI  
[APPELLATE BENCH]**

**ORDER BELOW EXHIBIT-12  
IN  
[A-1]APPEAL NO. 52 OF 2018  
IN  
RAE SUIT NO. 1155/1856 OF 2012**

1. Matunga Navjivan Co-op. Hsg. Society Ltd.....Appellant  
(Orig. Plaintiffs)

**Versus**

1. Secretary Union of India & Ors. ....Respondents  
(Orig. Defendants)

Ld. Advocate Mr. S. B. Pokharne for Appellants

Ld. Advocate Mrs. Milan Ghosh for Respondent Nos. 1 to 4.

**Coram : S. R. Salunkhe Additional Chief Judge  
&**

**L. S. Chavan, Judge,  
C.R. No.2  
Dt: 17.04.2018**

**ORDER:- [Per L.S. Chavan]**

This is an application filed by respondents for granting the stay to the execution of Judgment and decree dtd. 14.12.2017 passed in RAE Suit No.1155/1856 of 2012 by the learned trial judge presiding over C. R. No.26 of the Court of Small Causes, Mumbai.

2. According to respondents, the above suit is partly decreed on 14.12.2017. The Learned Trial Judge has refused to pass the eviction

decree in respect of suit premises being post office admeasuring 592.34 sq.ft situated at Matunga, Navjivan Co-operative Society Limited, Bhagwansingh Colony, 172, Senapati Bapat Marg, Mtunga (w), Mumbai. which is assailed by the appellants under appeal. It is contended that the respondents also wants to challenge the impugned judgment and decree by filing an appeal. They received the certified copy of judgment and decree on 21.12.2017. It is contended that all the papers and proceedings of the said matter were with their earlier advocate and same were received from the said advocate on 29.12.2017. The respondents being a Government department, the matter was referred to law ministry and to the higher authority of the department of Post for their opinion about the said order. After receiving the approval of Ministry of Law, all the papers were sent to the advocate Mrs. Meenal Ghosh on 17.02.2018 for drafting the appeal. After drafting the appeal, it has to be send to the Law Ministry for approval and other higher authority of department of Post and thereafter appeal can be filed in the court. Due to above difficulties, they could not file an appeal in stipulated period and occurred the delay of 61 days for the same. Therefore, they requested for extension of time or for granting the stay to the execution of decree dtd. 14.12.2017.

3. The appellants by filing their reply strongly opposed for granting the stay to the execution of judgment and decree dtd. 14.12.2017. According to them, the present appeal is filed by them against the refusal of prayer to pass the eviction decree in respect of suit premises admeasuring 592.34 sq.ft. The subject matter of the stay is not covered by the subject matter of appeal. Therefore, the respondents have no right to seek the stay to the execution of judgment and decree in the present

appeal. Hence, requested for rejecting the application.

4. Heard the learned advocate of both sides. Perused the available material on record.

5. Following points arise for our consideration. Our findings with reasons thereon are as under :-

<u>Sr.</u>	<u>Points</u>	<u>Findings</u>
1.	Whether the execution of impugned Judgment and Decree passed in RAE Suit No.1155/1856 of 2012 by the Learned Trial Court needs to be stayed ?	no
2.	What order ?	As per final order.

### REASONS

#### AS TO POINT NO. 1 & 2 :-

6. The learned advocate of respondents Mrs. Meenal Ghosh argued that in view of agreement of lease dtd. 05.09.1959, the respondents are occupying the suit premises till today. The appellants by making false grounds of bonafide requirement obtained the eviction decree against the respondents. In view of judgment and decree passed in RAE Suit No.1155/1856 of 2012, the respondents are directed to hand over the possession of suit premises within two months. The respondents want to challenge the judgment and decree by preferring an appeal but for filing the appeal the approval of the Ministry of Law and higher authority of the department of Post was required. Due to that, they could not file an appeal within stipulated period. The period of two months has been granted by the Learned Trial Judge for handing over the possession of suit

premises is expired on 21.02.2018. Therefore, she requested for extending the time or for granting the stay to the execution of judgment and decree. Further, it is argued that the respondents have good case on merit and likelihood to succeed in matter. If the stay is not granted, the grave irreparable loss and injury will be caused to the respondents which cannot be compensated in terms of money. Hence, requested for granting the stay to the execution of judgment and decree.

7. Per contra, the learned advocate of the appellants pointed out that the present appeal is filed by the appellants for setting aside the refusal order passed in respect of suit premises admeasuring 592.34 sq.ft. The respondents have no right to seek the stay to the judgment and decree without filing an appeal or without assailing the findings of the Learned Trial Judge. Hence, requested for rejecting the application.

8. On perusal of judgment and decree dated 14.12.2017, it is seen that the eviction suit being RAE Suit No.1155/1856 of 2012 was filed by the appellants against the respondents on the grounds of non-user, arrears of rent, bonafide requirements and sub-letting in respect of the suit premises i.e. two structures on the ground floor totally admeasuring 1036.24 sq.ft. carpet area which works out to 592.34 sq.ft. Carpet area for the Post office and 444 sq.ft carpet area for Sub-Post Master's quarters situated at Matunga, Navjivan Co-op. Hsg. Soc. Ltd., Bhagwansingh Colony, 172, Senapati Bapat Marg, Matunga (w), Mumbai-16. The Learned Trial Judge has partly decreed the suit in respect of the suit premises of Sub-Post Officers quarters admeasuring 444 sq.ft. with direction to the respondents to hand over the peaceful possession of suit

premises of Sub-Post Officers quarters within two months. However, the prayer for eviction in respect of suit premises of Post office admeasuring 592.34 sq.ft. Bhagwansingh Colony, 172, Senapati Bapat Marg, Matunga (w), Mumbai-16 is refused.

9. The present appeal is filed by the appellants against the refusal of eviction decree in respect of post office admeasuring 592.34 sq.ft. The respondents are seeking the stay to the execution of judgment and decree dated 14.12.2017. Therefore, question arise before us whether application filed by the respondents is maintainable or not? Secondly, whether, there is sufficient cause for granting the stay to the execution of judgment and decree?

10. It is settled position of law that the relief of stay to the execution of decree is discretionary as contemplated under Order 41 Rule 5 of the Code of Civil Procedure, 1908. In view of this provision a person who is aggrieved by the judgment and decree passed by the Learned Trial Judge can seek the stay to the execution of judgment and decree by filling an appeal. The learned advocate of the respondents argued that the Learned Trial Judge has failed to appreciate the fact of the case and document adduced by the respondents and arrived the wrong conclusion. Therefore, the impugned judgment and decree are not sustainable in law and fact and deserves to be set aside. But, all these grievance raised by the respondents are meaningless as there is no appeal or cross objections filed by them to fortify their grievance. They without filing an appeal or without challenging the findings of the Learned Trial Judge seeking the stay on assumptions that they are going to file an appeal. Unless appeal filed

against the judgment and decree, the respondents cannot seek the stay to the execution of judgment and decree. Therefore, prima facie it appears that the application filed by the respondents is not maintainable. Secondly, the grounds raised by them in the stay application are not justifiable for invoking the provision to grant stay under Order 41 Rule 5 of the Code of Civil Procedure, 1908 as an exceptional. Thirdly, the present appeal is filed in respect of the suit premises ie post office admeasuring 592.34 sq.ft. Whereas the stay is sought for entire decree. It means subject matter of the stay is not covered by the subject matter of appeal. Therefore, we finds the application is devoid of merit and same is liable to be rejected. Hence, we answer the point No.1 in the negative and in answer to point No.2, pass following order.

**ORDER**

1. Application [Exhibit-12] is hereby rejected.
2. No order as to costs.

I agree,

**(S.R.Salunkhe )**  
**Additional Chief Judge**  
**Court Room No.2.**  
**Dt: 17.04.2018**

**(L. S. Chavan)**  
**Judge,**  
**Court Room No.2.**  
**Dt: 17.04.2018**

Dictation on : 17.04.2018.  
Transcribed on :17.04.2018.  
Checked and signed on :18.04.2018

**(L. S. Chavan)**  
**Judge C. R. No.2.**