

CNR : MHSCA2-002550-2015

IN THE COURT OF SMALL CAUSES AT MUMBAI

ORDER BELOW EXHIBIT 33

IN

R.A.E. SUIT NO.1455 OF 2015

Mrs. Shamsi Malek Malekpur

... Plaintiff

v/s

Pems Investment Pvt. Ltd.

... Defendant

**Coram : P. D. Zambre,
Judge, C.R.No.15,
Date : 05.05.2018**

ORAL ORDER :

The plaintiff has filed this application to stay operation of order passed on 04.05.2018 below Exh.30.

2. In short, it is the application of the plaintiffs that the defendant has preferred an application for condonation of delay and permission to file written statement on record which is allowed by the Court. The plaintiff wants to challenge the said order. Hence, prayed to stay operation of the order for a period of 2 months.

3. Say of other side is called. The defendant objected the application contending that Court has ordered to condone the delay

and permitted to file written statement on record subject to costs. The defendant has strong objection to stay the operation of order and prayed for appropriate order.

4. Heard the defendant. The plaintiff and his advocate are absent when called repeatedly till 05.00 p.m. The order of stay to the operation of order passed below Exh.30 is urgent matter. If order is not passed today then automatically one months time will be granted to the parties which will frustrate the intention of this application. Hence, this application is taken out for decision on merit without hearing the plaintiff. The defendant argued to the tune of its say. The plaintiff wants to stay the operation of order contending that she wants to prefer an appeal against the said order. The application appears to be filed without unreasonable delay. There is no justifiable reason to reject the application. In the circumstances, considering the fact that provision of appeal pre-supposes mistake of subordinate Court and considering the fact that the plaintiff wants to challenge the order below Exh.30 and wants to prefer an application for stay to order of the Court before Appellate Forum, if opportunity is granted to the plaintiff to challenge the order and till that period if order passed by this Court below Exh.30 is stayed as per Order 41 Rule 5 of the Code, no prejudice will be caused. Considering the facts and circumstances i.e. from 07.05.2018 till 04.06.2018, there is vacation to the Small Causes Court and Civil Court, if 2 months period is granted to challenge the order and get the order of the Appellate Court, it will suffice the purpose and meet real ends of justice. On the contrary, if the application is rejected, substantial loss

might be caused as contended by the plaintiff. Hence, the application needs to be allowed. Hence, the order :

ORDER

1. The application is allowed.
2. The operation of order of this Court dated 04.05.2018 passed below Exh.30 will be stayed for the period of 2 months from the date of uploading the order.

(P. D. Zambre)
Judge, C.R.No.15
05.05.2018

Dictated on : 05.05.2018
Transcribed on : 05.05.2018
Checked & signed on : 05.05.2018