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PABBATHI VENKATARAMAIAH CHETTY

v.

PABBATHI N. RATHNAMAIAH CHETTY AND ORS.

FEBRUARY 2, 2007

B

[R.V. RAVEENDRAN AND DALVEER BHANDARI, JJ.]

C

*Interim Order: Stay of execution of final decree in a partition suit—Suit for partition of commercial building—Final decree passed—Appeal against—Pending appeal stay of execution of final decree sought—High Court directing appeal to be listed for final hearing and staying demolition of building—Held, since appellant is running a lodge in the suit premises, his appeal would become infructuous if stay of dispossession is not granted—But at the same time interests of respondent also require to be protected—Therefore, interim order granted by High Court is modified to the effect that there shall be stay of dispossession of appellant pending appeal subject to appellant paying Rs.25,000/- per month to the respondent—High Court would dispose of the appeal expeditiously.*

D

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 444 of 2007.

E

From the interim Order dated 1.9.2006 of the High Court of Andhra Pradesh at Hyderabad in ASMP No. 1555/2006 in A.S. No. 454/2006.

L. Nageshwara Rao, V. Sridhar Reddy and K.V. Kameshwaran for the Appellant.

F

A. Subba Rao for the Respondents.

The Order of the Court was delivered by

### ORDER

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1. Delay condoned

2. Leave granted.

3. Learned counsel for the Appellant submitted that the first Respondent is the only contesting Respondent and prayed that notice to Respondent

H

Nos. 2 to 8, who are proforma Respondents may be dispensed with. Notice to respondents 2 to 8 is accordingly dispensed with. A

4. This appeal arises from an interim order of the High Court. The Appellant herein has filed an appeal against the final decree in a suit for partition. In the said appeal, he sought stay of execution of the final decree, which required division of a commercial building which is in the occupation of the Appellant who is running a lodge therein. The High Court, considered the application for stay filed by the Appellant and made an order dated 1.9.2006 directing that the appeal itself should be listed for final hearing after Dassara Vacation and till then, the building shall not be demolished. B

5. The said order is under challenge. The learned counsel for Appellant submits that he is in possession of the suit premises and his prayer was for interim stay of dispossession as he is running a lodge and an order of stay of demolition will not, therefore, protect his rights, pending appeal. On the other hand, the learned counsel for the first Respondent submitted that the Appellant has been enjoying the suit premises and though the first Respondent is entitled to two third share therein, he has been kept out of possession and he is also not receiving any income therefrom. It is not in dispute that Appellant is running a lodge in the suit premises. The appeal against final decree filed before the High Court may become infructuous if stay of dispossession is not granted. But at the same time, the interests of first Respondent require to be protected. The learned counsel for first respondent estimates the minimum loss to his client as Rs. 25000/- per month. C D E

6. Having regard to the facts and circumstances, interests of justice would be served if the Appellant is directed to pay to the first Respondent Rs. 25,000/- (Rupees twenty five thousand) per month unconditionally during the pendency of the Appeal. F

7. We, accordingly dispose of this appeal as follows:

(i) The interim order dated 1.9.2006 granted by the High Court is modified as follows: There shall be stay of dispossession of the Appellant during the pendency of the Appeal before the High Court subject to the Appellant paying Rs. 25, 000/- per month to the first Respondent, every month commencing from 1.2.2007. If there is any default on the part of the Appellant, the stay order shall stand vacated." G

A (ii) Nothing stated above shall be construed as expression of any opinion on the merits of the appeal before the High Court or quantum of *mesne* profits. The order is purely interim in nature, Pending disposal of the appeal.

B (iii) The High Court is requested to hear and dispose of the appeal expeditiously as already directed by it, in its order dated 1.9.2006.

(iv) Parties to bear their respective costs in this appeal.

R.P.

Appeal disposed of.