

(2019) 07 GUJ CK 0051
In the Gujarat High Court

Case No : R/Special Civil Application No. 9060 Of 2019

Laxmiben Chandrakant Dhabale

APPELLANT

Vs

Chemstar Organics (India) Ltd

RESPONDENT

Date of Decision : 15-07-2019

Acts Referred:

Constitution Of India, 1950 — Article 227
Code of Civil Procedure, 1908 — Order 41, Order 41 Rule 1, Order 41 Rule 5, Order 21 Rule 11A, Order 21 Rule 26, Order 21 Rule 26(1), Order 21 Rule 26(3), Order 21 Rule 29

Citation : (2019) 07 GUJ CK 0051

Hon'ble Judges : A.J. Shastri, J

Bench : Single Bench

Advocate : Vm Dhotre, Mayur V Dhotare, Hiren R Sharma

Final Decision : Allowed

Judgement

A.J. Shastri, J

1. Present petition is filed under Article 227 of the Constitution of India by the petitioners who are the judgment creditor, who filed originally the

Special Summary Suit No.136 of 2006 under the provisions of Order-37 of the Code of Civil Procedure ('the Code' for short). The husband of the

petitioner No.1 and the father of the petitioner Nos.2 to 4 filed suit for recovery of Rs.29,29,163.76 from the respondents jointly and severally. Based

upon the pleadings and documentary evidence, the said summary suit came to be allowed by the judgment and decree dated 7.7.2017. Learned Trial

Judge did not grant interest on the decretal amount on the ground that the same is not prayed for by the petitioners- plaintiffs. As a result of this, the

first appeal came to be filed before the High Court insofar as the Trial Court has not awarded interest on the decretal amount. The said first appeal,

being First Appeal No.3697 of 2017, is admitted by the Division Bench of this Honâ??ble Court vide order dated 17.11.2017 and the same is pending

for final disposal. Even after the original judgment and decree having been passed by learned Trial Judge, since the respondents have chosen not to

pay anything, the petitioners were constrained to file Special Execution Petition No.56 of 2018 on 19.9.2018. The said execution petition was filed

before learned 14th Additional Senior Civil Judge, Vadodara for seeking execution of the judgment and decree dated 7.7.2017 passed in Summary Suit

No.136 of 2006. The Court issued notice in the said execution proceedings and in response thereto, the respondent Nos.2 and 3 have filed their

appearance and have contested the said proceedings. Simultaneously, pending the execution proceedings amongst the other applicants, application

under Order 21 Rule 11A of the Code came to be filed for arresting and detention of the judgment debtor. The said application in which the pleadings

are completed and were to be heard and disposed of, however meantime, the respondent Nos.2 and 3 on one pretext or the other, are prolonging the

hearing of all the aforesaid applications filed by the petitioners and went on seeking time and later on, on 20.3.2019, filed First Appeal before this Court

for challenging the original decree dated 7.7.2017 after almost a period of two years and even after appearing in the execution proceedings.

2. It is further case of the petitioners that during pendency of the aforesaid first appeal, which is kept in stamp number, on 12.4.2019, the respondent

Nos.2 and 3 filed an application under Order 21 Rule 26 of the Code at Exh.39 for seeking stay of the execution proceedings. Surprisingly, in the

aforesaid background of facts, learned Judge, according to the petitioners, assumed the jurisdiction and stayed the execution of the decree dated

7.7.2017 for a period of 90 days by passing an order on 20.4.2019 and it is this order dated 20.4.2019, which is made the subject matter of the present

petition under Article 227 of the Constitution of India.

3. Since pursuant to the notice issued by the Court, learned advocates appearing on behalf of the petitioners as well as the respondents have chosen to

appear and represent their respective sides, and considering the fact that the decree of the suit of 2006 is yet to be enforced, a request was made by

learned advocates jointly to hear and dispose of the petition at the admission stage itself. Resultantly, the Court heard learned advocates at length and

the matter is put up for orders.

4. In the aforesaid background, learned advocate Mr. V.M. Dhotre appearing on behalf of the petitioners, who is representing the judgment creditor,

has vehemently contended that there is a gross error committed by the Court below in passing the impugned order. It has been submitted that under

the provisions of Order 21 Rule 26 as well as Rule 29 of the Code, moment the first appeal is already preferred, learned Court below has no

jurisdiction to stay the order by usurping the jurisdiction of the first Appellate Court. It has further been submitted that the very object of Order 21

Rule 26 of the Code is just to facilitate the judgment debtor to prefer first appeal against the decree and for such provision, which is made of enabling

in nature, attempt should have been made to get the stay order from the appeal proceedings, which is undisputedly filed before this Court and

therefore, granting of this impugned order is practically frustrating the very spirit of Order 21 Rule 26 of the Code and such, the impugned order, since

is without jurisdiction and /or suffers from vice of serious material irregularity, the same deserves to be quashed and set aside.

4.1. It has further been submitted by learned advocate Mr. Dhotre that moment the first appeal is filed, there is an ample power and jurisdiction

available to the Appellate Court to stay the order on the basis of the cause which is being projected. But, here is a case, in which parallelly, pending the

first appeal, the respondent Nos.2 and 3 without showing any sufficient cause has invoked the jurisdiction of the Court below under Order 21 Rule 26

of the Code and obtained an order of stay for a period of 90 days, which reflects a clear error on the part of the Court below. Mr. Dhotre has

submitted that the condition precedent of exercise of power under Order 21 Rule 26 of the Code is that there must be sufficient cause and simply

because in casual manner, the first appeal is filed and kept in stamp number and conveniently obtained the interim relief and that too, without condition,

such an attempt on the contrary requires to be deprecated apart from this irregularity in passing an order. Mr. Dhotre has further submitted that if this

is allowed, then very enabling provision contained in Order 21 Rule 26 of the Code would become redundant and allowing the party to misuse the

same as has been done in the present case. Mr. Dhotre has submitted that in any eventuality, if a litigant has not been able to file first appeal with

sufficient cause for challenging the decree, in that eventuality, the only resort be allowed to avail of such remedy of approaching the Court under

Order 21 Rule 26 of the Code, whereas, here is a case in which the respondents have already preferred the first appeal before the High Court, kept

the same under stamp number and the first appeal is filed almost after a period of two years from the date of the decree and then remedy of Order 21

Rule 26 of the Code is availed of, which is nothing but a clear misuse of the provisions for which it is not meant for. Mr. Dhotre has further submitted

that apart from the fact of condition precedent, being not in existent in the request of the respondents, but even the mandate of sub-rule (3) appears to

have been ignored by the Court and simply relied upon the assurance of not transferring the property in question. Even assuming without admitting that

the Court has jurisdiction but then there is also a mandate to impose condition requiring the respondents, i.e. the judgment debtor, to submit such

security or enforce condition and unless and until such is offered by the judgment debtor, the Court cannot pass an order even if it has assumed the

jurisdiction. A bare reading of the order in question, reflects that there is no security offered and there is no condition imposed upon while exercising

the jurisdiction under Order 21 Rule 26 of the Code and therefore also, the order in question is contrary to the very statutory provisions and mandate

contained therein. Therefore also, the impugned order requires to be set aside.

4.2. In addition to this, learned advocate Mr. Dhotre has submitted that it is a settled position of law that usually, money decree is not to be stayed

without any condition. Now, here, by applying this provision, indirectly the judgment debtor has avoided this vogue principle and unfortunately, the

Court without taking this circumstance in mind granted the stay for a period of 90 days of a decree which is absolutely a money decree and as such,

the principle about staying the money decree is also grossly violated. Hence, according to Mr. Dhotre, this is nothing but a clear jurisdictional error

which requires this Court to correct it by passing suitable order.

4.3. Mr. Dhotre has further submitted that bare reading of Order 21 Rule 26 of the Code is suggesting that the Court to which a decree has been sent

for execution, shall have jurisdiction to stay the execution upon satisfying itself about the sufficient cause. Meaning thereby, that Court to which the

decree is sent for execution will have a jurisdiction and not the Court which has

passed the judgment and decree. Literal meaning of this provision makes it clear that the impugned order is nothing but a clear example of error of jurisdiction which requires this Court to correct. Mr. Dhotre has further submitted that here is a case in which the suit for recovery was filed way back in the year 2006, same has been dragged on upto the year 2017 and only on 7.7.2017, ultimately money decree is passed against the respondents. Now, this money decree of 7.7.2017, since not complied with, execution proceedings were filed in the year 2018 and without allowing unreasonable period to be passed on, the respondents have ultimately filed the first appeal in the High Court, conveniently kept the same under office objection, since there is a stamp number, filed in March 2019 and pending that first appeal, instead of obtaining interim relief from the High Court, with a view to take further time, moved an application under Order 21 Rule 26 of the Code at Exh.39, only on 12.4.2019. This chronology of events is sufficient enough to indicate that apart from technicalities, there is a clear attempt made by the present respondents to abuse the process of the Court machinery of not allowing a decree to be executed. Now, even during this time and pending this petition also, undisputedly, no attempt is made nor projected that even in that first appeal, which has been filed practically after 20 years, any attempt is made to obtain interim relief. Hence, this conduct itself is sufficient enough to set aside the impugned order since it has not been visualized by the Court below. The spirit of entire provision contained under Order 21 Rule 26 of the Code gets frustrated if in this particular manner, any litigant is permitted to obtain stay order. Resultantly, this gross abuse must be curbed by passing stringent order.

4.4. Mr. Dhotre has relied upon a decision of the Apex Court in the case of Shaukat Hussain @ Ali Akram and others Vs. Smt. Bhuneshwari Devi (dead) by L. Rs. and others reported in (1972)2 SCC 731, and by referring para 6 thereof, it has been submitted that transferee Court has jurisdiction and not the Court which has passed the decree and as such also, the same learned Judge cannot grant interim relief which has been granted, who has apparently no jurisdiction. Here is a case in which, the decree has not been transferred for execution and therefore also, applicability of Order 21 Rule 26 of the Code is also seriously in controversy. However, be that as it may, even apart from technicality, gross facts are sufficient enough to set aside

the impugned order. Resultantly, the petition be allowed by granting the reliefs as prayed for.

4.5. Mr. Dhotre has further submitted that Order 41 Rule 5 of the Code has invested the power in Appellate Court to grant stay of a decree which is

appealed from. Here is a case in which, moment the first appeal is filed before the Appellate Forum, instead of filing application Order 21 Rule 26 of

the Code, this provision contained in Order 41 Rule 5 will have an application. In a situation like this and as such, the application under Order 21 Rule

26 of the Code itself is not tenable moment the appeal is already submitted before the appellate forum. Resultantly, the Court which has passed the

order which is impugned in this petition, has no jurisdiction at all and as such, on this very count, the order impugned deserves to be set aside.

4.6. Apart from this, learned Trial Judge has even not taken care to compel the party to offer any security or impose any condition while effecting stay

of money decree and as such, this order deserves to be set aside in the interest of justice. Mere undertaking would not be treated as security or can

substitute imposition of condition and therefore, the impugned order deserves to be quashed and set aside in the interest of justice.

5. To meet with the stand taken by learned advocate for the petitioners, learned advocate Mr. Hiren Sharma appearing on behalf of the respondent

No.1 has vehemently opposed the stand by contending that the Court below has got a jurisdiction who passed an order and has exercised the

discretion vested in it. The Court below has also got specific jurisdiction once finding it sufficient cause to grant stay. It has further been submitted that

since the declaration was made not to alienate the property in question, it amounts to satisfying the criteria of offering security or can be termed as

imposition of condition and therefore, there is hardly any error committed by learned Judge in exercising the jurisdiction under Order 21 Rule 26 of the

Code. According to Mr. Sharma, this very provision was made the subject matter before Madras High Court. The Madras High Court propounded

that both the Courts below will have a jurisdiction and therefore, apparently, there is no error committed by the Court below which warrants

interference in exercise of the extraordinary jurisdiction. Mr. Sharma has further submitted that it is not just and proper on the part of the present

petitioners to contend that there is a gross delay in filing an application because the execution is already filed by them at a belated stage. Resultantly,

there is hardly any justification in the submission of learned advocate in respect of raising a plea about the delay. Even otherwise, the Statute when conferred jurisdiction on the Courts and if discretionary order is passed, every discretionary order is not to be made subject matter of a petition and therefore, in absence of any error committed by the Court below or in absence of any perversity, there is hardly any case made out by the petitioners to call for any interference. As a result of this, the impugned order is not required to be set at naught, on the contrary sufficient time, reasonable in nature, is given. Hence, the petition be dismissed in limine. No other submissions have been made.

6. Having heard learned advocates appearing for the parties and having gone through the submissions made by learned advocates in respect of exercise of the jurisdiction by the Court below, core question posed before the Court is as to whether after filing an appeal before the Appellate Forum, whether the Trial Court can exercise jurisdiction under Order 21 Rule 26 or Rule 29 of the Code? Now before dealing with this, few circumstances are not possible to be ignored by the Court:-

(1) First of all, here is a case in which the suit for recovery of Rs.29,29,163.76 has been filed with respect to the outstanding amount in the year 2006.

This suit of 2006 came to be contested in which, the defendants have chosen not to give any evidence contrary to the examination-in-chief of the

petitioners at Exh.32 and also against the documentary evidence at Exhs.36 to 81 and undisputedly, the defendants appeared, submitted an application

at Exh.15 for seeking leave to defend and also made an attempt to defend the suit and upon condition of deposit of Rs.2 lac, the Court granted leave to

defend vide order dated 16.4.2007 and since then, the matter was lingered and which ultimately left the Court to pass a judgment and decree on

7.7.2017. So, in a suit of 2006, the decree came to be passed in the year 2017.

(2) Further, it appears that against non-granting of interest, the petitioners have also preferred a first appeal immediately after in the year 2017 itself

which came to be admitted by the Division Bench of this Court on 17.11.2017. This fact is also undisputedly noticed by the respondents herein but

then have chosen to drag on the execution proceedings which are numbered as Special Execution Petition No.56 of 2018. Moment, the respondents-

the contesting defendants realized, they also preferred a first appeal after almost

a period of around two years, being First Appeal (Stamp) No.10034 of 2019 and as such, money decree of 7.7.2017 is challenged by the respondents herein by submitting the first appeal in the month of March 2019, and in that first appeal, it appears that the respondents have made no attempt to obtain any interim stay against execution though the appellate Court is seized with the appeal. After already submitting the first appeal before the Appellate Court, i.e. the High Court, instead of pressing for interim relief or making any attempt, the respondents herein invoked the jurisdiction of the Court which passed a decree by submitting an application under Order 21 Rule 26 of the Code and prayed for staying the execution proceedings of the judgment and decree passed below Exh.84 and 85 in Summary Suit No.136 of 2006 dated 7.7.2017. Now, this application is already submitted before learned 15th Additional Senior Civil Judge, Vadodara, but then, as is visible from page 34, what has been prayed is that till final hearing and disposal of the first appeal pending in the High Court, the stay of execution application bearing No.56 of 2018. Now, this relief which has been sought by submitting application Exh.39 came up for consideration before learned 14th Additional Senior Civil Judge, Vadodara, the Court which passed the original decree dated 7.7.2017 and then by passing a brief order, straightway granted stay for a period of 90 days from the date of order even after noticing that the applicants have already approached the High Court, submitted the first appeal and already invoked the appellate jurisdiction. This order is also passed by just relying upon the declaration that the judgment debtors are not to dispose of the property to the tune of value of the decree, i.e. Rs.29,29,163.76 and then declaration is accepted by learned 14th Additional Senior Civil Judge and the stay has been granted.

7. The background of the aforesaid situation requires this Court to examine Order 21 Rule 26 of the Code, which read as under:-

26. When Court may stay execution

(1) The Court to which a decree has been sent for execution shall, upon sufficient cause being shown, stay the execution of such decree for a reasonable time, to enable the Judgment-debtor to apply to the Court by which the decree was passed, or to any Court having appellate jurisdiction in respect of the decree or the execution thereof, for an order to stay execution, or for any other order relating to the decree or execution which might

have been made by such Court of first instance or Appellate Court if execution had been issued thereby, or if application for execution had been made thereto.

(2) Where the property or person of the judgment-debtor has been seized under an execution, the Court which issued the execution may order the restitution of such property or the discharge of such person pending the result of the application.

(3) Power to require security from, or impose conditions upon, judgment-debtor- Before making an order to stay execution, or for the restitution of property or the discharge of the judgment-debtor, the Court shall require] such security from. or impose such conditions upon, the judgment-debtor as it thinks fit.

8. This provision is essentially meant for enabling the judgment debtor to apply to the Court for challenging the judgment and therefore, basically, this sub-sub (1) of Rule 26 postulates a situation where if sufficient cause is shown by the judgment debtor, then for a temporary brief period, the Court has power to grant stay.

But, reading of sub-rule(1) indicates that such exercise can be done by the Court to which the decree has been sent for execution and secondly, there must be a sufficient cause being shown for obtaining such stay for a reasonable period and therefore, these two condition precedents, if satisfied, then

only the Court to which the decree has been sent for execution shall have jurisdiction to pass order of stay. Further reading of sub-rule (3) is requiring the Court before making an order of stay of execution to impose appropriate condition or to require a judgment debtor to offer a security and

therefore, sub-rule (3) of Rule 26 is imposing and casting a duty on the Court either to impose condition or require the judgment debtor to offer a

security and without that, no order be passed. In the context of this, reading of application is becoming evident for the Court and for that, the

application Exh.39, which is placed at page 34 of the petition compilation, is first appearing to have been submitted before learned 15th Additional

Senior Civil Judge at Vadodara, might be to the Court to which the decree has been sent for execution but then, sufficient cause which is requiring,

appears to be completely missing from bare reading of the application itself. Mere pendency of the appeal before the High Court is no ground to obtain

interim stay of execution. What has been asserted in the application is that the first appeal is pending before the High Court and secondly, the

judgment debtors, i.e. the respondents, have given an undertaking to the Court of not disposing of the assets of the factory at Padra, Vadodara for the

value of the decretal amount. Except this, there is no other cause referred, which can constitute sufficient cause.

9. Further, it also appears that what has been prayed for is also significant to be noticed. The relief contained in para 7(B) is sought for of such a

nature as if the High Court where the appeal is filed has not to do anything in respect of grant of stay. Para 7(B) prayed for reads as under:-

B. This Hon'ble Court may be pleased to grant stay of the execution application bearing its no.56/2018 till final hearing and disposal of the First Appeal

bearing its filing no.10034/2019 filed by the respondents in the Hon'ble High Court of Gujarat.

10. As such, essentially, an attempt is made by the respondents-judgment debtor to thwart the execution and unfortunately, learned Trial Judge has

made an attempt to usurp the jurisdiction of the High Court in respect of considering the grant of stay in First Appeal. Now, in this context, a further

provision is also material enough to be considered. The provision which is contained in Order 41 of the Code is providing a remedy of appeal to the

judgment debtor or aggrieved person which remedy is already availed by the present respondents herein and as such, moment the first appeal remedy

is availed, the Court is of the opinion that the respondents could have resorted to this provision, if wanted an interim stay.

11. The relevant rules of this order 41 require to be reproduced hereinafter since the issue related to stay of execution is to be considered by the

Court:-

Order-41 Rule 1(3):

Where the appeal is against a decree for payment of money, the appellant shall, within such time as the Appellate Court may allow, deposit the

amount disputed in the appeal or furnish such security in respect thereof as the Court may think fit.

Order-41 Rule 5:

5. Stay by Appellate Court

(1) An appeal shall not operate as a stay of proceedings under a decree or order

appealed from except so far as the Appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree; but the Appellate Court may for sufficient cause order stay of execution of such decree.

[Explanation- An order by the Appellate Court for the stay of execution of the decree shall be effective from the date of the communication of such order to the Court of first instance, but an affidavit sworn by the appellant, based on his personal knowledge, stating that an order for the stay of execution of the decree has been made by the Appellate Court shall, pending the receipt from the Appellate Court of the order for the stay of execution or any order to the contrary, be acted upon by the Court of first instance.]

(2) Stay by Court which passed the decree- Where an application is made for stay of execution of an appealable decree before the expiration of the time allowed for appealing therefrom, the Court which passed the decree may on sufficient cause being shown order the execution to be stayed.

(3) No order for stay of execution shall be made under sub-rule (1) or sub-rule (2) unless the Court making it is satisfied-

(a) that substantial loss may result to the party applying for stay of execution unless the order is made;

(b) that the application has been made without unreasonable delay; and

(c) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.

(4) Subject to the provisions of sub-rule (3)], the Court may make an ex parte order for stay of execution pending the hearing of the application.

(5) Notwithstanding anything contained in the foregoing sub-rules, where the appellant fails to make the deposit or furnish the security specified in sub-rule (3) of rule 1, the Court shall not make an order staying the execution of the decree.

12. Conjoint reading of this Order 41 of the Code suggests that where the appeal is filed against the decree for payment of money, the appellant shall within such time, as the Appellate Court may allow, deposit the amount disputed in appeal or furnish such security in respect thereof, as the Court may think it proper. Now, this is the mandate of Rule 1 of Order 41 in which the appellant is to deposit the amount disputed and which may be directed or

permitted by the Appellate Court in the appeal proceedings. Simultaneously, reading of Rule 5 suggests that the Appellate Court under sub-Rule (1) of Rule 5 can stay execution of such decree. Sub-rule (2) of Rule 5 indicates that when an application is made to stay of execution of a decree before expiring time allowed for appealing therefrom, the Court which passed the decree may on sufficient cause being shown order the execution to be stayed. This rule is indicating that the Appellate Court can grant stay before expiration of the time allowed for appealing by the Court which passed the decree and therefore, here is a case in which, no time is given while passing the judgment and decree on 7.7.2017 and further, there is no sufficient cause even being projected. Now, sub-rule (3) of Rule 5 is clearly giving a mandate on Court not to stay the execution either under sub-rule (1) or (2) unless the Court making it or granting it, is satisfied three contingencies; i.e. (a), (b) and (c), and here, neither any elements are visible to have been satisfied which enables the Appellate Court to grant stay. Even under sub-rule (4) of Rule 5, the Court is invested with a power to grant ex-parte stay of execution pending the application in first appeal, which remedy probably is not availed of. Sub-rule (5) of Rule 5 is clearly giving mandate to the Court not to grant any stay of execution of the decree even the appellant fails to make deposit or furnish any security specified under sub-rule (3) of Rule 1.

13. Such conjoint reading of this is clearly suggesting that the respondents herein who are the judgment debtors have clearly bypassed the statutory remedy which is available just with a view to see that they can avoid deposit or any condition to be imposed upon while staying the money decree and as such, this attempt made by the respondents herein is unwarranted and is nothing but clearly tinkering with the relevant provisions which usually ought to have been resorted.

14. If this order is allowed to stand in the eye of law, it would mean that even judgment debtor will file first appeal either in the High Court or in the Appellate Forum, keep the appeal pending under objection or lying as it is and then straightway obtained stay order under Rule 21 Rule 26 of the Code without any just cause. The conjoint effect of the aforesaid provisions clearly suggests that serious error is committed by the Court below while exercising the jurisdiction which is otherwise not vested. Had it been a case

where for the purpose of enabling the judgment debtor to file an appeal and for that purpose, if the judgment debtor wanted some breathing time, probably the Court to which it has been transferred to for execution might have granted or considered the request for stay. But, here is a case in which after enormous delay, the stay is tried to be obtained even after filing the first appeal before the High Court by ignoring the provisions of Order 41 of the Code itself and what has been prayed for is, as if it is usurping or allowing the Trial Court to usurp the jurisdiction of the High Court pending disposal of the appeal. This is not a clear spirit of Order 21 Rule 26 of the Code and as such, the impugned order deserves to be quashed and set aside forthwith as being bad in law.

15. In the wake of the aforesaid effect and of reading of the provisions, which are referred to above, this Court is of the opinion that since the circumstances are eloquent enough and apparent language is clear enough, the judgments which have been cited by the respective sites are not requiring in-depth discussion as the same are in different facts situation, unlike the present one. Therefore, in respectful agreement, such proposition of law cited before the Court in the background of the facts is altogether different. Hence, the petitioners appear to have made out a strong case in their favour to consider and grant the reliefs as prayed for in the present petition.

16. Additionally, if this situation is allowed to be encashed by the respondents herein, then it has also got effect of ignoring the well recognized principle that money decree cannot be stayed without reasonable condition. The Court also found that mere declaration and undertaking will not take place of either imposition of condition or offering any security by the judgment debtor and as such, without much discussion, since the attempt itself is not deserved to be encouraged, the Court is of the view that the case is made out by the petitioners.

17. Hence, the impugned order is quashed and set aside. However, while setting aside the impugned order, this Court is clarifying that any observation made in this order or in the order impugned would not restrain the appellants from requesting the Appellate Forum, i.e. the High Court, for considering the request for grant of stay, which may be independently looked into and with this observation, the petition stands allowed with no order as to costs.