

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

CIVIL APPLICATION NO.107 OF 2015 IN
SECOND APPEAL NO.663 OF 2007

Jayram Sukram Sabale and ors. ..Applicants

Versus

Gangabai w/o Dagadu Pardeshi
(died) through her L.Rs.
Gokul Dagadu Pardeshi and ors. ..Respondents

Mr V.J.Dixit, Senior Counsel i/b Mr V.Y.Patil, Advocate for applicants
Mr P.P.Dawalkar, Advocate for respondent No.1A

CORAM : N.W. SAMBRE, J.

DATE : 21st January 2015

PER COURT

1. This Court, while granting interim stay on 10th June 2008, incorporated a condition that the interim stay to the judgment and decree passed by the Court below will continue on depositing the amount of Rs.10,000/- per year towards the probable mesne profit, which was required to be deposited in the Court on or before 31st March of each year and the amount of last year was required to be deposited within two months.

2. As the amount was not deposited, this Court, by order dated 15th February 2010 was pleased to vacate the interim relief.

3. As a consequence of vacation of interim relief, the present respondents have initiated execution proceedings.

4. Mr Dixit, learned Senior Counsel for the applicants submits that the intention of this Court was to protect the appellants on a condition that appellants shall deposit the amount as ordered herein above. He submits that the amount could not be deposited in view of certain communication gap between the appellants and their earlier lawyer. He further submits that the appellants are ready and willing to deposit the amount along with interest.

In view of above, he submits that the execution proceedings filed by the respondents are required to be stayed.

5. While countering the above referred submissions, learned Counsel for respondents - decree holders submits that there is already adjudication in favour of the respondents and the interim relief was conditional. According to him, the appellants intentionally flouted the condition incorporated by this Court in the order dated 10th June 2008 and further urged that no equity can be weighed in favour of the appellants. He further submits that if this Court allow the appellants to deposit the amount, the same would be amounting to modify the earlier order of vacation of interim relief, passed on 15th February 2010.

6. Having regard to the rival contentions of the parties, it is noticed that this Court while granting interim relief on 10th June 2008 was of the view that the interest of the present respondents be protected and as such, order in anticipation to deposit Rs.10,000/- and arrears thereof towards mesne profit to be calculated. The fact remains that the mesne profit is not calculated till date, as the enquiry is still pending.

7. The appeal is already admitted and pending final hearing since 2007. If the interim relief, as was earlier ordered is not restored, the same will cause prejudice to the present appellants. This Court cannot lose sight of the fact that the interest of the respondents is also required to be looked into.

8. In view of above, it will be appropriate that the order passed by this Court on 10th June 2008 is restored. Paragraph 3 of the said order is granted subject to present appellants complying with the observations made therein. The appellants herein shall deposit the said amount in this Court within a period of two weeks from today. The appellants shall also pay the interest at the rate of 12% p.a. On the amount from the date, the same was due.

9. Civil Application stands granted in above terms.

(N.W. SAMBRE, J.)

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