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

WRIT PETITION NO. 7104 OF 2015

Tukaram Jayram Jamdar,
Age: 59 years, Occu: Agril.,
R/o.: Dhotre, Taluka Kopargaon,
District Ahmednagar

..PETITIONER
(Org. Deft. No.3)

VERSUS

1. Smt. Kamal Annasaheb Jamdar,
Age: 51 years, Occu: Agriculturist
2. Bhaskar Sakham Jamdar,
Age: 43 years, Occu: Agriculturist
3. Kailas Sakham Jamdar,
Age: 41 years, Occu: Agriculturist
4. Anil Raosaheb Jamdar,
Age: 29 years, Occu: Agriculturist
5. Arun Raosaheb Jamdar,
Age: 25 years, Occu: Agriculturist

All R/o.: Dhotre, Taluka Kopargaon,
District Ahmednagar

..RESPONDENTS
(Resp. No.1 Org. Plaintiff,
Resp. No.2 to 5 Org. Defendants)

Mr P. B. Shirsath, Advocate for petitioner;
Mr V. M. Chate, Advocate for respondents

CORAM : N.W. SAMBRE, J.

DATE : 17th November, 2015

ORAL ORDER :

By the present writ petition, the petitioner-original defendant No.3 questions the legality of the order dated 24th April, 2015, passed by District

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Judge-1, Kopargaon, below Exh.5 in Regular Civil Appeal No.15 of 2015, whereby prayer for grant of stay to the compromise decree, has been refused.

2. Learned Counsel appearing on behalf of the petitioner would urge that the Trial Court has wrongly referred to the provisions of Order XXIII, Rule 3 of the Code of Civil Procedure, whereas the provisions of Rule 1-A of Order XLIII of the Code of Civil Procedure are applicable in the present case. According to him, as the petitioner is not a party to the compromise decree and compromise was recorded between the plaintiff and defendants no.2, 4 and 5, the petitioner has every right to prefer the proceedings and seek interim relief.

3. While opposing the application and the present petition, Mr Chate, learned Counsel appearing on behalf of the respondent-decree holder would urge that since the substantive appeal is pending and the compromise decree is already given effect to by incorporating appropriate mutation entries, stay as is prayed has rendered infructuous. According to him, the present petition does not hold any merit and is liable to be rejected.

4. *Prima facie*, it is required to be noted that the present petitioner, admittedly is not a signatory to the compromise, being defendant no.3 to the suit as the compromise decree was arrived at between the plaintiff and defendants no.1, 2, 4 and 5. The petitioner, as such, has challenged the

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same before the learned District Judge, in Regular Civil Appeal No. 15 of 2015 and has sought stay, in view of the provisions of sub-rule 2 of Rule 1-A of Order XLIII of the Code of Civil Procedure.

5. In my opinion, the impugned order passed by the learned District Judge is not sustainable, as Order XXIII, Rule 3 of the Code of Civil Procedure has hardly any application in view of the fact that the present petitioner was not a party to the compromise decree and has already preferred a substantive appeal against the same.

6. In view thereof, in my opinion, the impugned order is not sustainable and as such, the same is set aside. Learned District Judge-1, Kopergaon is directed to decide application Exh.5 preferred by the present petitioner on its own merits and in the light of the above referred observations.

Writ Petition stands allowed in above terms with no order as to costs.

(N.W. SAMBRE, J.)

amj