

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

Office Memoranda of appearance, directions and orders.	Notes, of Court's orders and Registrar's	Office Coram, Court's or Judge's orders.
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CIVIL APPLICATION NO. 14074 OF 2015
IN SA/161/1995

RAMESH S/O BABASAHEB KHANDARE & OTHER
VERSUS
GIRISH S/O CHINTAMAN POTE GAONKAR & OTHER

...
Advocate for Applicants : Mr. B. S. Kudale .
Advocate for Respondent Nos.1 to 5: Mr. K. J. Ghute Patil.

CORAM: T. V. NALAWADE, J.
DATED: 23rd OCTOBER, 2015.

PER COURT:

1. The application is filed for restoration of stay order made by this Court to the execution of possession decree. It appears that due to non-compliance of some order like supplying copies and taking steps for service the stay was vacated automatically. The Appellants want the restoration of that stay which was a blanket stay and no condition was imposed on the Appellants, defendants. Present application is opposed by other side.

2. The submissions made and the record show that the suit for possession was filed in the year 1982. Decree of possession is given by the first appellate Court and the appeal was filed in the year 1995. It has become practice that some parties do not take steps intentionally so that the matter automatically gets protracted. In view of such practice and provision of Order 41 Rule 5 of the Civil Procedure Code it has become necessary for this Court to see that some condition is imposed before giving stay. There is decree of possession of 4 Acres 22 Gunthas land and it can be said that the defendants, present appellants are in possession for more than 33 years. Even if it is presumed that it is a dry land, it can be further presumed that income per year of this area on an average was at-least Rs.6,000/-. In view of the years for which the defendants are in possession, this Court holds that stay can be granted only subject to condition of depositing Rs.2 Lakh by the Appellants in the trial Court or the executing court. The amount to be deposited within 4 weeks from today. If the amount is not deposited, the execution of the decree can go on to the fullest satisfaction. Delay, if any, stands condoned,

subject to aforesaid condition.

3. List the main matter on 23rd November, 2015 for final hearing.

[T. V. NALAWADE, J.]

Dt.23/10/2015
ans/14074