

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 5024 OF 2014

Shri Ravindra Ramrao Dubal

..Petitioner

Vs

Nathu Bapu Ingawale, since
deceased, through L.Rs.

.. Respondents

1A. Smt.Laxmibai Nathuram
Ingawale and Ors.

Mr.Anilkumar K. Patil , Advocate for Petitioner.

Mr. Dhananjayrao D. Rananaware, Advocate for Respondents
No.1A to 1D.

CORAM : R.G.KETKAR,J.

DATE : 15/06/2015

PC:

1. Heard Mr. Anilkumar Patil, learned counsel for the petitioner and Mr. Dhananjayrao Rananaware, learned counsel for respondents no.1A to 1D.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the Judgment and order dated 19.4.2014 passed by the learned District Judge-1, Karad below Exh.6 in Misc. Civil Application No.13 of 2014 (delay condonation application). By that order, the learned District Judge has stayed execution of the Judgment and decree dated 21.3.2012 passed in R.C.S. No.85 of 2007 till final disposal of delay condonation application.

3. In support of this Petition, Mr. Patil strenuously contended that the learned District Judge committed serious error in entertaining and deciding application- Exh.6 for stay of the decree without first condoning delay. He submitted that in terms of Order 41 Rule 3-A(3), Court cannot pass an order for stay of execution of the decree against which the appeal is proposed to be filed so long as the Court does not, after hearing under Rule 11, decide to hear the appeal. Under Order 41 Rule 11, the Appellate Court after hearing the appellant or his pleader, may dispose of the appeal. In short, he submitted that the learned District Judge has granted stay to the trial Court's decree in the teeth of the provisions of Order 43 Rule 3-A(3).

4. On the other hand, Mr. Rananaware submitted that respondents no.1 and 2 have filed Appeal challenging the trial Court's decree. Along with the Appeal, they have filed application for condonation of delay as well as application for stay of the trial Court's decree. It is the petitioner who filed application at Exh.51 on 11.4.2014 requesting the District Court to decide the application at Exh.7 for stay of the trial Court's decree. It is because of insistence of the petitioner, the learned District Judge first decided stay application pending the consideration of application for condonation of delay. He, therefore, submitted that it is not open for the petitioner, now, to complain about the

order passed by the District Court on 19.4.2014.

5. I have considered the rival submissions made by the learned counsel appearing for the parties. I have also perused the material on record, As noted earlier, respondents 1A to 1D have preferred the Appeal challenging the judgment and decree dated 21.3.2012 in R.C.S. No.85 of 2007. Since there was delay in filing the Appeal, they have preferred application for condonation of delay as also separate application for stay of the trial Court's decree. Perusal of Exhibit 51 shows that it is the petitioner who made application on 11.4.2014 requesting the learned District Judge to decide stay application urgently. It is at the insistence of the petitioner, the learned District Judge took up application for stay and granted stay till the final disposal of the delay condonation application. In view thereof, in my opinion, it is not open to the petitioner to complain about the procedure adopted by the learned District Judge. That apart, the petitioner was not in a position to show that the learned District Judge has no power to grant stay to the trial Court's decree pending consideration of application for condonation of delay.

6. In view thereof, no case is made out for invocation of powers under Article 227 of the Constitution of India. The learned District Judge is, however, requested to decide the application for condonation of delay as expeditiously as possible and in any case

within three months from production of the authenticated copy of this order. It is made clear that I have not expressed any opinion on the merits of controversy. All contentions of the parties on merits are kept open. Subject to above, the Petition fails and the same is dismissed.

(R.G.KETKAR, J.)