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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.902 OF 2009  
IN  
SECOND APPEAL NO.224 OF 2009

|                              |                |
|------------------------------|----------------|
| Pramila M. Borkar & Ors.     | ...Applicants  |
| V/s.                         |                |
| Kashinath P. Kulkarni & Ors. | ...Respondents |

Mr.R.S. Apte, Senior Counsel i/b Mr.Girish Paryani for the Applicants.  
Mr.Girish Godbole i/b Mr.Shailendra Kanetkar for the Respondents.

**CORAM : R.D. DHANUKA, J.**  
**DATE : 27TH NOVEMBER, 2015.**

**P.C. :-**

1. By this civil application the applicants seek stay of execution and implementation of the impugned judgment and decree dated 25<sup>th</sup> February, 2009 passed by the learned District Judge, Pune. The second appeal filed by the applicants has been admitted on 13<sup>th</sup> August, 2014 on the substantial question of law formulated in the said order. By another order passed in another civil application, this Court had recorded the statement made by learned counsel for the respondents thereby continuing the statement made earlier. Learned senior counsel appearing for the applicants had also made a statement that the applicants shall not create any third party rights nor will part with possession of the suit premises.

2. Mr.Godbole, learned counsel for the respondents is not in a position to continue the said statement made before this Court.

3. Since interim order passed by this Court on 13<sup>th</sup> August, 2014 is in operation and in view of the fact that the second appeal is already admitted, I am inclined to continue the interim order passed by this Court, however, on condition that the applicants continue the said statement made before this Court on 13<sup>th</sup> August, 2014. The applicants shall not create any third party rights nor will part with possession of the suit property and on the condition that the applicants furnish a fresh bank guarantee of Rs.1.00 lac in the name of the trial Court in place of earlier bank guarantee of Rs.25,000/-. The said bank guarantee shall be furnished within four weeks before the trial Court from today. The said bank guarantee to continue during the pendency of the second appeal. A copy of such bank guarantee shall be furnished to the learned advocate representing the respondents simultaneously.

4. Mr.Apte, learned senior counsel for the applicants continues the statement made before this Court on 13<sup>th</sup> August, 2014.

5. Mr.Godbole, learned counsel for the respondents states that if this Court proposes to continue *ad-interim* order passed by this Court, the applicants should be directed to deposit requisite amount of compensation in this Court as a condition precedent of continuation

of stay. Mr.Apte, learned senior counsel for the applicants on the other hand states that there was no prayer for deposit of amount of any mesne-profit. Since there was no prayer for payment of any mesne-profit, I am not inclined to accept the submission of Mr.Godbole, learned counsel for the respondents.

6. I therefore, pass the following order :-

a). The civil application is made absolute in terms of prayer clause (a). The statement made by Mr.Apte, learned senior counsel for the applicants to continue during the pendency of appeal. The applicants shall furnish a bank guarantee of a nationalized bank in favour of the trial Court within four weeks from today. Such bank guarantee shall be kept alive during the pendency of the second appeal. A copy of the bank guarantee shall be furnished to the respondents' advocate simultaneously. The bank guarantee shall be furnished before trial Court.

7. In view of the fact that one of the respondent is 83 years old, the office is directed to place the second appeal for hearing and final disposal under the caption "expedited (senior citizen).

8. The civil application is accordingly disposed of in aforesaid terms. No order as to costs.

**(R.D. DHANUKA, J.)**