

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

WRIT PETITION NO.10121 OF 2015

Bhanudas Dagadu Patange and others

.. Petitioners

Versus

Vijay @ Ambadas Dattatraya Pawar and others

.. Respondents

**Mr. N. V. Walawalkar, Senior Advocate a/w Mr. S. M. Sabrad, for the
Petitioners.**

**Mr. Vineet Naik, Senior Advocate i/by Mr. R. S. Alange, for the
Respondent Nos.2(a) to 2(d).**

CORAM : R.M. SAVANT, J.

DATE : 14th OCTOBER, 2015

PC.

1. The above Petition takes exception to the order dated 07.10.2015 passed by the Lower Appellate Court i.e. the Learned Principal District Judge, Solapur, by which order the application Exh.40 filed by the Respondent Nos.2(a) to 2(d) i.e. the Respondent Nos.2(a) to 2(d) in the Appeal in question came to be allowed and the interim arrangement which was made vide the order dated 11.10.1996 passed in First Appeal No.1158 of 1996 was continued, as the said Respondents desire to challenge the judgment and decree passed by the Lower Appellate Court by way of a Second Appeal in this Court. The Petitioners herein are the original Appellants in the Appeal in question. In reply to the said application filed

by the Respondent Nos.2(a) to 2(d), the Petitioners stated that the relief sought vide the said application Exh.40 may be granted on the condition that the said Respondents be directed to deposit an amount of Rs.2 lakhs as security to take care of the interest of the Appellants in the Appeal in the event the Respondent Nos.2(a) to 2(d) fail in the Second Appeal that would be filed against the judgment and decree passed by the Appellate Court. However, before this Court it is sought to be contended that since the stay application was filed only by the Respondent Nos.2(a) to 2(d) and not by the Respondent No.1 i.e. the original Respondent No.1 to the Appeal, the said stay would not enure to the benefit of the Respondent No.1 and therefore the slot made available to the Respondent No.1 in terms of the interim arrangement may be made available to the Petitioners who have a decree in their favour. Since the said application Exh.40 was not adjudicated on the said basis, it is for the Petitioners i.e. the Appellants in the Appeal to make an appropriate application before the Lower Appellate Court for modification of the order passed by the Lower Appellate Court, if they deem it appropriate. The Learned Senior Counsel appearing for the Respondent Nos.2(a) to 2(d) Mr. Vineet Naik points out that the original Respondent No.1 Vijay @ Ambadas Dattatraya Pawar has expired on 06.09.2015. If any such application is filed by the Petitioners, needless to state that the Lower Appellate Court would consider the same

on its own merits and in accordance with law. The fact that the Petitioners have no grievance in so far as the Respondent Nos.2(a) to 2(d) are concerned, would be taken note of by the Lower Appellate Court whilst adjudicating any such application. With the directions as aforesaid, the Writ Petition is disposed of.

[R.M. SAVANT, J]