

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

WRIT PETITION (STAMP) NO.33092 OF 2014

Shri. Walu Waman Patade

.. Petitioner

Versus

Shri. Dilip Ramdas Patade and another

.. Respondents

Mr. P. N. Joshi with Mrs. Vrushali Raje, Advocates for the Petitioner.

CORAM : R.M. SAVANT, J.

DATE : 08th JANUARY, 2015

PC.

1. The writ jurisdiction of this Court is invoked against the order dated 30th August, 2014 passed by Lower Appellate Court i.e. the learned Adhoc District Judge-I by which order the application No.18 moved by the decree holder i.e. Respondent No.1 came to be allowed and the Lower Appellate Court has observed that the stay order which was operating in the Appeal has already come to an end and no such application to continue the order dated 17.09.2013 is on record. Hence, the same is deemed to be cancelled.

2. It is required to be noted that the stay was granted by the Lower Appellate Court on 16.01.2013 and the stay was continued from time to time. The impugned order has been challenged on the ground that the

observations made in the impugned order to the effect that the Appellant is continuously absent and that he has failed to file an application for continuation of stay after 05.08.2013 and that no such application for continuation of stay from 17.09.2013 is erroneous and not borne out by the record. The order is also challenged on the ground that the impugned order dated 30th August, 2014 has been placed without hearing the Petitioner i.e. original Appellant. The learned counsel for the Petitioner has taken me through the Roznama of the Appeal in question. The said Roznama discloses that the application for continuation of stay has been moved from time to time and has been granted by the Lower Appellate Court. However, it seems that after 05.08.2013, there is no mention in the Roznama of the stay being continued. However, the fact remains that the Petitioner i.e. original Appellant was represented. As indicated above, the order has also been passed on the basis that the Appellant is continuously absent. Prima-facie the said observation of the Lower Appellate Court is not borne out by the record as except for some few intermittent dates the advocate for the Appellant was present. Since some factual aspect would be involved, it would therefore be proper if the Petitioner i.e. original Appellant is directed to file an appropriate application before the Lower Appellate Court for reinstatement of the order of the stay by urging the contentions which are urged in the present

Petition, if such application is filed needless to state that the Lower Appellate Court would consider the same on its own merits and in accordance with law. The contentions of the parties are explicitly kept open. To facilitate the filing of such an application, the parties are directed to maintain status-quo for a period of two weeks from date within which time the application would be required to be filed by the Petitioner/original Appellant. If such an application is not filed within the aforesaid time, the order of status-quo as on date would come to an end after the period of two weeks. With the aforesaid directions, the Writ Petition is disposed off.

[R.M. SAVANT, J]