

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.

WRIT PETITION NO.837 OF 2014

(Vasant Builders (Developers, Builders & Contractors), Akot and another ..vs.. Mohan s/o Narayan Patwardhan and others)

 Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

CORAM : Z.A. HAQ, J.

DATED : 24-11-2015

Shri R.L. Khapre, learned Advocate for the petitioners and Shri S.R. Deshpande, learned Advocate for the respondent No.1 were heard in the morning session. The contention on behalf of the petitioners is that the property which is attached in the execution proceedings cannot be sold as the first appeal challenging the judgment and decree passed by the trial Court is pending. The petitioners are relying on the provisions of Order XLI Rule 6 of the Code of Civil Procedure. The learned Advocates were not in a position to point out the orders passed in the first appeal and therefore, to ascertain the orders passed in the first appeal, the matter was kept back and the record of the first appeal was called.

2. The writ petition was called out after 2.30 p.m., however, the learned Advocates for the petitioners and the respondent No.1 were not present. The matter was kept back. Again when the matter is called out, the

learned Advocates for the petitioners and the respondent No.1 are not present.

3. I have seen the orders passed in First Appeal No.381/2012. This Court, by the order dated 06-03-2014, has granted stay to the execution of the judgment and decree passed by the trial Court.

4. In paragraph No.5 of the impugned order dated 29-08-2013, the executing Court has directed attachment of the property, however, it is recorded that the order for sale of the said property is not being passed and it will be passed at appropriate stage. By the order dated 11-12-2013, the executing Court has refused to recall the order passed on 29-08-2013.

5. The executing Court has not passed any order directing sale of the properties which are attached. This Court, by the order dated 06-03-2014, has granted stay to the execution of the decree. In these facts, in my view, the writ petition is premature.

6. The petition is dismissed accordingly. In the circumstances, the parties to bear their own costs.

JUDGE