

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,  
BENCH AT AURANGABAD**

APPEAL FROM ORDER NO.9 OF 2016

Baliram s/o Limbaji Muley,  
Age 48 years, Occu. Private Service,  
R/o House No.P-3, 3/5, Vitthal Nagar,  
N-2, CIDCO, Aurangabad

..Appellant  
(Orig.Respondent)

Versus

1. Smt. Asha w/o Rajendra More,  
Age Major, Occu. Housewife/Labour,  
R/o House No.M-2-4-8 (owned by  
appellant), N-6, Sinhgad colony,  
CIDCO, Aurangabad

2. The Administrator,  
CIDCO, City& Industrial  
Development Corporation,  
Jalna road, Aurangabad

..Respondents

Mr R.K. Khandelwal, Advocate for appellant  
Mr R.V. Gore, Advocate for respondent No.1

**CORAM : V.K. JADHAV, J.**

**DATE : 15<sup>th</sup> June 2016**

**PER COURT**

Heard.

2. This appeal arises out of the order dated 4<sup>th</sup> January 2016 passed by the District Judge-1, Aurangabad, below Exh.7 in Regular Civil Appeal No.250 of 2015, by which the learned District Judge stayed the execution and implementation of the judgment and decree dated 31<sup>st</sup> January 2015 passed by the Civil Judge, Junior Division, Aurangabad in Regular Civil Suit No.334 of 2013.

3. The brief facts giving rise to the present appeal are as follows :
4. The appellant - original plaintiff instituted Regular Civil Suit No.334 of 2015 before the Civil Judge, Junior Division, Aurangabad for declaration and recovery of possession of the house property along with the odd shape land attached to the suit house. The respondent No.1 - original defendant has strongly resisted the suit by filing the written statement. The appellant - plaintiff and the respondent No.1 - defendant led their oral and documentary evidence in support of their rival contentions. The learned 3<sup>rd</sup> Joint Civil Judge, Junior Division, Aurangabad, vide judgment and decree dated 31<sup>st</sup> January 2015 partly decreed the suit and thereby directed the respondent No.1 - defendant to hand over the vacant possession of the suit property to the appellant - plaintiff within a period of two months from the date of the judgment.
5. Being aggrieved by the order dated 31<sup>st</sup> January 2015, the respondent No.1 - defendant has preferred Regular Civil Appeal No.250 of 2015 and also filed application Exh.7 for staying the effect of the judgment and decree passed by the trial Court, as aforesaid. The learned District Judge - 1, Aurangabad, by impugned order dated 4<sup>th</sup> January 2016 passed below Exh.7 allowed the said application and stayed the execution of impugned judgment and decree passed in Regular Civil Suit No.334 of 2013 dated 31<sup>st</sup> January 2015 to the extent of delivery of possession of the suit property. Being aggrieved by the same, the appellant - plaintiff has preferred this appeal from order.

6. The learned Counsel for the appellant submits that the appellant – plaintiff is owner of the suit house and is the original allottee. The learned Counsel submits that after considering the evidence led by the parties in support of their rival contentions, the trial Court has rightly decreed the suit and directed the respondent – defendant No.1 to deliver the possession of the suit property within a period of two months from the date of the order. The learned Counsel submits that the learned District Judge has not considered the evidence led by the parties before the trial Court and granted the blanket stay to the execution of the judgment and decree passed by the trial Court.

7. The learned Counsel for the respondent No.1 – original defendant submits that being aggrieved by the judgment and decree passed by the trial Court, the respondent No.1 – original defendant has preferred appeal and the learned District Judge-1, Aurangabad has rightly stayed the effect and execution of decree in appeal to the extent of delivery of possession. The learned Counsel further submits that if the impugned judgment and decree is not stayed, then the very purpose of filing the appeal would be frustrated. Learned Counsel submits that the respondent – defendant No.1 has a strong hope of success in the appeal and the lower appellate Court is a last fact finding Court. The learned Counsel submits that the impugned order thus calls for no interference. There is no substance in the appeal and the appeal is thus liable to be dismissed.

8. The judgment and decree passed by the trial Court is in respect of delivery of vacant possession of the suit property. The respondent

No.1 - original defendant has challenged the said judgment and decree by filing Regular Civil Appeal No.250 of 2015. Thus, considering the nature of dispute, the learned Judge of the lower appellate Court has rightly stayed its execution to the extent of delivery of possession of the suit property. The learned Judge has rightly observed that if the effect of the judgment and decree passed by the trial Court is not stayed to the extent of delivery of possession of the suit property, then it may cause great loss and hardship to the respondent No.1 - original defendant and also may create complications and multiplicity of proceedings. I do not find any fault in the impugned order dated 4<sup>th</sup> January 2016 passed below Exh.7 in R.C.A.No.250 of 2015 by the learned District Judge - 1, Aurangabad. There is no substance in the appeal, however, the appellant - original plaintiff may file an application before the lower appellate Court for expeditious hearing of the appeal and lower appellate Court may consider the same after hearing both the sides, on its own merits. Hence, the following order :

### **ORDER**

Appeal From Order is accordingly dismissed. In the circumstances, there shall be no order as to costs.

**( V.K. JADHAV, J.)**