

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 5025 OF 2016
IN AO/48/2015

SHIVAJI CHANDRAHAS TODKARI
VERSUS
CHANDRAKANT S/O SURESH PAWAR AND OTHERS

...
Advocate for Applicants : Mr. Deshmukh Prashant K.
Advocate for Respondents : Mr. V.S. Tanwade
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CORAM : V. K. JADHAV, J.
DATED : 17th JUNE, 2016

PER COURT:-

1. Heard both sides.
2. This Court, by order dated 8.2.2016, dismissed the appeal from order No. 48 of 2015 and further granted protection for a period one month to the appellant Shivaji Todkari subject to deposit of amount of Rs.1,00,000/- within one month from the date of order, as security in appeal. In the light of the said order, the appeal as well as civil application No. 5947 of 2015 stand disposed of. Now this application is moved for extension of protection for further period of one year with direction to the Principal District Judge, Osmanabad to decide the pending Regular Civil appeal Nos. 20 of 2015 and 21 of 2015, within the said period.
3. Learned counsel for the applicant submits that the applicant is in

possession of property since 20 years and if his possession is not protected during pendency of the appeals before the lower appellate court, the very purpose of filing said appeals would be frustrated.

4. Learned counsel for the respondents submits that the learned District Judge has rejected the stay application by holding that in the previous litigation all issues were decided and the decision has become final. The learned District Judge has also observed that present applicant is trying to protract the execution of decree. Learned counsel submits that considering entire evidence on record, this Court has dismissed the appeal as well as writ petition, however, granted protection only for a period of one month subject to deposit of amount of Rs.1,00,000/-. Learned counsel in the alternate submits that at the most the Principal District Judge may be directed to decide all the matters within time bound manner.

5. It appears that after full-fledged trial of suit, the learned Judge of the Trial Court has decreed the suit filed by the respondents for recovery of possession and dismissed the suit instituted by the present applicant for decree of perpetual injunction. Furthermore, in the appeals, the learned Judge of the lower appellate court, after considering the evidence on record, has specifically observed that the present applicant is trying to protract the execution of said decree when all the issues were decided in the previous litigation and decision has

become final. This Court has confirmed the view taken by the learned District Judge and accordingly dismissed the appeal as well as writ petition. So far as the civil application filed by the applicant is concerned, the same was allowed for a period of one month only.

6. In view of this, I am not inclined to extend the protection for further period. However, considering the nature of litigation and the challenge to the judgment and decree passed by the trial court before the lower appellate court, I direct the lower appellate court to dispose of Regular Civil Appeal Nos. 20 of 2015 and 21 of 2015 within three months from today.

7. With these observations, civil application is disposed of.

8. Since this Court had extended the protection for a period of one month subject to deposit of Rs.1,00,000/- as security in the pending appeal and accordingly the applicant has deposited the said amount, the said amount be transferred to the learned District Judge, Osmanabad. The learned District Judge, Osmanabad shall take appropriate decision in respect of said amount.

(V. K. JADHAV, J.)