

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

WRIT PETITION NO. 8445 OF 2015

- 1] Vinayak Gyanoba Borole,
Age: 54 Years, Occu: Agriculture
- 2] Bhimrao Gyanoba Borole,
Age: 59 Years, Occu: Agriculture
Both R/o. Janapur Shirol,
Taluka Udgir, District Latur **....Petitioners.**

Versus

- 1] Vithal Narayan Hondare,
Age: 58 Years, Occu: Agriculture.
- 2] Tukaram Gunadaji Chinchole,
Age: 62 Years, Occu: Agriculture
- 3] Amol Vithal Chinchole,
Age: 39 Years, Occu: Agriculture
- 4] Mainabai Vithal Chinchole,
Age: 59 Years, Occu: Household
- 5] Sanju Govindrao Halse,
Age: 39 Years, Occu: Agriculture
All R/o. Janapur [Shirol],
Taluka Udgir, District Latur **...Respondents.**

Mr. Mahesh K. Bholshe h/f Mr. Parag V. Barde, Advocate for petitioners.

Mr. R.S. Shinde, Advocate for respondent No.1.

CORAM : T.V. NALAWADE, J.
DATED : 31st August, 2016.

JUDGMENT :

- 1) Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal.

2) The petition is filed to challenge the order made by the learned District Judge & Additional Sessions Judge, Udgir on application, Exh. 5, in Regular Civil Appeal No. 43/2014. The application was filed for grant of stay to the execution of decree given in Regular Civil Suit No. 480/2001 by the learned Civil Judge, Junior Division, Udgir. The District Court has refused to grant stay by observing that the delay condonation application filed along with the application filed for permission to deposit the cost ordered by the District Court is not yet decided and so, the stay cannot be granted.

3) Technically, it can be said that the Court had power to consider the stay application even when such miscellaneous application was pending. In any case, the submissions made show that the cost amount is now deposited in the Court and the appeal itself is registered. In view of this circumstance, this Court holds that opportunity needs to be given to the present petitioners to argue on stay application on merits and the District Court needs to decide stay application on merits.

4) In view of these circumstances, the petition is allowed. The order made by the learned District Judge, Udgir on

Exh. 5 in Regular Civil Appeal No. 43/2014 is hereby set aside. The District Court is to hear the application on merits and decide it within one month from today. Cost amount deposited in this Court is to be sent to executing court and that Court will consider this amount while deciding the right of plaintiff to get the mesne profit.

Authenticated copy is allowed to both the sides.

[T.V. NALAWADE, J.]

ssc/