

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

**WRIT PETITION NO. 6988 OF 2016**

Ataulla Khan Faizulla Khan Pathan ... Petitioner  
**Vs.**  
Mesaji Laxman Ubare ... Respondent

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Mr. A.G. Dalal, Advocate for the petitioner.  
Mr. R.R. Suryawanshi, Advocate for the respondent.  
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**CORAM : SUNIL P. DESHMUKH, J.**  
**DATE : 05-07-2016.**

**Per Court :**

1. Heard the learned counsel for the parties.
2. The petitioner is before this court aggrieved by order dated 23-02-2016 passed by District Judge-1, Basmathnagar upon an application exhibit-5 in Regular Civil Appeal No. 46 of 2015. The petitioner is plaintiff in Special Civil Suit No. 31 of 2011 instituted against present respondent-defendant for specific performance and injunction in respect of suit property.
3. The suit had been decreed under the judgment and decree dated 04-07-2015. An appeal has been filed against the same, referred to above, which is pending. Application for stay to aforesaid judgment and decree has been filed in appeal by respondent-defendant at exhibit-5 and the same has been allowed

by the learned District Judge-1, Basmathnagar.

4. Learned counsel Mr. Dalal appearing for the petitioner vehemently submits that, the order on the face of it is cursory without reference to the necessary facts or any material for forming any opinion. The order, as such is, untenable. He thus requests, that impugned order be set aside and/or at least indulgence be given by staying the effect of staying injunction operating against the defendant. He submits that this is rainy season and the petitioners are in possession and a finding in said respect has been rendered by the trial court upon evidence, in favour of petitioner.

5. On the other hand, learned counsel Mr. Suryawanshi submits that, as a matter of fact, it has been observed by the appellate court, that the respondent-defendant has claimed that they have very strong chances of getting success. He submits that claim of possession by petitioner would not be proper at this stage, since appeal is continuation of the suit and the finding is wide open for challenge and has been challenged. In the circumstances, stay to the decree of injunction is proper in favour of the defendant-appellant.

6. Perusal of the impugned judgment although shows that there may not be any particular reference to factual aspects,

however, the court has referred to that it has gone through the relevant record and has considered the same. The rendition of impugned order may not be in tune with the general judicial considerations required. But situation can be met with by proper directions to the appellate court to decide on the appeal itself instead of getting entangled into decision making afresh upon interlocutory application.

7. It would thus be expedient without disturbing the impugned order as has been passed to direct the District Judge-1 to decide the Regular Civil Appeal No. 46 of 2015 as expeditiously as possible preferably within a period of six months from the date of receipt of this order. Necessary paper work for the same be prepared and be kept ready to enable early disposal of appeal. This responsibility shall be borne by the respondent.

8. Writ petition stands disposed of.

**(SUNIL P. DESHMUKH)**  
**JUDGE**