

1. Heard learned counsel for the petitioner.
2. The petitioner contends that application exhibit-20 moved in special darkhast no. 4 of 2012 pursuant to rule 29 of order XXI has been erroneously rejected. After hearing the learned counsel it appears that, the suit for specific performance filed by present respondents bearing special civil suit no. 12 of 2011 against present petitioner has been decreed and said decree has been put in execution under special darkhast no. 4 of 2012, since petitioner's application for stay under said rule has been rejected, the petitioner is before this court.
3. Learned counsel refers to that, there are three other suits pending in respect of the suit property bearing regular civil suits no. 373 of 2010, 221 of 2013, 145 of 2015.

4. It appears that, R.C.S. No. 373 of 2010 is for partition and separate possession, wherein the present petitioners are parties and not the present respondent-plaintiff in R.C.S. No. 12 of 2011. R.C.S. No. 221 of 2013 is for declaration. The present respondents are not at all parties to said suit. R.C.S. no. 145 of 2015 is a suit filed by present respondent seeking perpetual injunction against the present petitioners.

5. Rule 29 of order XXI reads thus:

"29. Stay of execution pending suit between decree-holder and judgment-debtor- *Where a suit is pending in any Court against the holder of a decree of such Court [or of a decree which is being executed by such Court], on the part of the person against whom the decree was passed, the Court may, on such terms as to security or otherwise, as it thinks fit, stay execution of the decree until the pending suit has been decided:*

[Provided that if the decree is one for payment of money, the Court shall, if it grants stay without requiring security, record its reasons for so doing.]"

6. Learned counsel states that, as a matter of fact, a regular civil appeal has been preferred bearing no. 27 of 2015 against the decree of which execution is sought under the special darkhast. Initially appeal had been pending for delay condonation and now the delay is condoned before the appellate court, while an application has been made for stay, the appellate court has issued notices and, in the meanwhile, the executing court is pressing hard for execution and the next date in the matter before the executing

court is 18-08-2016. Learned counsel refers to that, next date before the appellate court in appeal no. 27 of 2015 is scheduled on 24-08-2016.

7. Having regard to aforesaid factual position, it would be difficult to consider that Rule 29 could be effectively invoked and the impugned order can be faulted with. Moreover, a substantive appeal against the decree is pending at the instance of petitioner themselves. In the circumstances, it is incumbent to seek appropriate relief, in the substantive appeal, against the decree is pending.

8. Learned counsel at this juncture, expresses that the petitioner would be put in a difficult situation, since the executing court is insisting upon going on with execution and the matter is scheduled on 18-08-2016, whereas, the appeal is to come up before the appellate court on 24-08-2016. In view of aforesaid, it would be expedient that the execution of the decree may not be insisted upon till 24-08-2016. In the circumstances, the writ petition is rejected, however, the decree in special civil suit no. 12 of 2011 may not be executed till 24-08-2016.

(SUNIL P. DESHMUKH)
JUDGE