

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

**CIVIL APPLICATION NO. 157 OF 2016
IN
SECOND APPEAL NO. 284 OF 2009
WITH
CIVIL APPLICATION NO. 156 OF 2016
IN
SECOND APPEAL NO. 285 OF 2009**

Angad Irappa Pitale Since dead through
Legal heirs Sushilabai and others ...APPLICANTS

versus

Chanchalbai Raosaheb Pitale
Since dead through L.Rs.
Nirmalabai ahadu Kumtewad and ors. ...RESPONDENTS

.....
Smt. M.S.Mhase-Thube, advocate holding for
Mr. Lex Aqutla, Advocate for applicants
Mr. B.L. Sagar, Advocate for respondents No. 1 to 3
.....

CORAM : SUNIL P. DESHMUKH, J.

DATED : 15th JANUARY, 2016.

Order :-

1. In view of appearance of Mr. Sagar on behalf of contesting respondents, Mr. Vibhute, learned counsel appearing before abatement of second appeal, seeks discharge from appearance, as his name is being shown on the board.
2. In view of the same, appearance of Mr. Vibhute, learned counsel stands discharged.
3. Heard learned counsel for the parties.

4. Mrs. M.S. Mhase – Thube, learned counsel for the applicants-appellants states that sole appellant in second appeal died and subsequently second appeal was declared to have been abated. In the circumstances, civil application had been moved for setting aside abatement order and restoration of second appeal, which came to be allowed.

5. Learned counsel submits that during pendency of second appeal interim relief in the shape of stay to the execution of decree had been operating, however, with abatement of the same, it was deemed that stay granted stands vacated. Taking disadvantage of the situation, the respondents had moved for execution of decree and further applied for issuance of possession warrant.

6. Learned counsel further submits that generally it is considered that when the matter is restored to its earlier subsisting position, it is restored along with reliefs. She, therefore, seeks indulgence to stay the execution of decree.

7. Mr. Sagar, learned counsel appearing for respondents, however, submits that it is not a general rule while matters are restored, those are restored along with interim relief. However, he is not in a position to controvert the factual position about that till abatement there had been interim relief operating in the form of stay to the execution and further that matter is being proceeded with in the executing court.

8. Having regard to that, matters are already admitted and with underlying consideration to have decision on merits in second appeal,

and interim relief had been operating, I deem it appropriate to grant civil applications in terms of prayer clause "B".

9. Accordingly, civil applications, for the reasons contained therein are allowed in terms of prayer clause "B" and stand disposed of.

10. At this stage, Mr. Sagar, learned counsel urges for placing the second appeals for hearing as early as possible. List the second appeals for hearing on the weekly board in the week commencing from 4th July, 2016.

Sd/-

(SUNIL P. DESHMUKH, J.)

MTK