

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.7454 OF 2016

Smt. Meena Pandit Thitte

... Petitioner

Vs

State of Maharashtra & Ors.

... Respondents

...

Mr. Subhash Jha a/w Ms. Rishita Jain I/b Law Global for the
petitioner.

Ms. M. P. Thakur, AGP for the State.

...

**CORAM : SHANTANU S. KEMKAR &
M. S. KARNIK, JJ.**

DATE : 1st JULY, 2016.

P.C. :

1. By filing this petition the petitioner is challenging the order dated 30/5/2016 (Exh.I) passed by the Additional Commissioner whereby the petitioner's application for stay of the order dated 6/4/2016 passed by the Additional Collector has been rejected.

2. According to the learned counsel for the petitioner the said order has been passed in the absence of the petitioner. As a result of which the petitioner could not get an opportunity to contest her claim for stay, on merits.

3. On the other hand, the learned AGP appearing for the petitioner submits that the petitioner in spite of having knowledge of the date did not appear on the date and as such the commissioner has passed the impugned order. In the

circumstances, according to her no case is made out to set aside the impugned order.

4. We have considered the submissions made and in our considered view as the petitioner was absent on the said date, the Additional Commissioner could have dismissed the application for stay on account of her non appearance. However, the Additional Commissioner has decided the petitioner's application on merits causing prejudice to the petitioner.

5. In the circumstances, in the interest of justice we feel that the petitioner deserves to be given an opportunity of hearing before the Additional Commissioner for presenting her application for grant of stay against the order passed by the Additional Collector.

6. As a result, we set aside the impugned order and remit the matter back to the Additional Commissioner firstly for deciding the application for stay afresh on merits and thereafter to decide the appeal itself on merits.

7. Parties to appear before the Additional Commissioner on 11 July 2016. On that date or within one week from it the Additional Commissioner to decide the petitioner's application for stay afresh without being influenced by the earlier order dated 30/5/2016.

8. After deciding the application for stay the appeal itself be decided by the Additional Commissioner as expeditiously as

possible but not later than 6 weeks from the date of decision on the stay application. Writ Petition is accordingly disposed off.

(M. S. KARNIK, J.)

(SHANTANU. S. KEMKAR, J.)