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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.2861 OF 2016
IN
FIRST APPEAL NO.116 OF 2006.

Smt. Kanchanben wd/o L Durlabhji (decd)	
through heirs	 Applicants
V/s.	
Kantilal Maganlal Shah (sincd decd)	
through heirs.	 Respondents

Mr. R. A. Thorat, a/w Mr. P. J. Thorat, for the Applicant.
Mr. Vishal Kanade, a/w Ms. Minal Parab I/by Bilawala & Co. for the Respondent Nos. 2 & 3.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 24TH OCTOBER, 2016.

P.C. :

1. Heard learned counsels for applicant and respondents.
2. This application is seeking stay to the operation, implementation and execution of the judgment and decree dated 19th September, 2005, passed in Short Cause Suit No.4996 of 1978.
3. It is submitted by learned counsel for applicant that at the time of filing of this appeal, such stay was sought. However, this Court vide its order dated 18th March, 2016, was pleased to observe that,

“Admittedly, the suit filed by the original plaintiffs is not ready for final hearing. No case is made out for grant of stay as of today. Application is rejected.” It is urged that now there is change in circumstances as the suit No.64 of 2002, is ready for final hearing as the issues therein are also framed and stage is now for recording of evidence by the parties.

4. Learned counsel for respondents takes objection to this application on the ground that once the order of stay was rejected by this Court, then again such order cannot be granted, especially when it will take some more time for final hearing of the suit. It is also submitted that in the alternative, hearing of the appeal can also be expedited and fixed for final hearing as it is already expedited by the Supreme Court. Hence, it can be kept for final hearing.

5. There is no dispute that appeal can be kept for final hearing and its hearing can also be expedited. However, the fact remains that when admittedly issues are framed in the suit filed by the original plaintiffs, and now the matter is for recording of evidence, some protection needs to be granted to the present applicants. It may be true that in the year 2006, when asked for and it was not granted. It was done with specific observation that suit filed by original plaintiffs was not ready for final hearing. Whereas, now as the issues are framed, it follows that the next stage is of hearing of the suit. Hence now as the said suit has

become ripe for final hearing, request for stay, in view of substantial change in the circumstances, needs to be considered.

Accordingly application is allowed. Stay is granted in terms of prayer clause (a) of the application. The execution, operation and implementation of the judgment and order dated 19th September, 2005, passed in Suit No.4996 of 1978 is stayed till decision of appeal.

6. Appeal is kept for final hearing on 28.11.2016.

[DR. SHALINI PHANSALKAR JOSHI, J.]