

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.183 OF 2016

Suresh Ganpat Bandal ... Petitioner
Vs.
Popat Shivram Autade and others ... Respondents

Mr. Rishikesh Soni a/w. Mr. Prabhakar Jadhav i/b. Mr. Vishal Kolekar for
Petitioner.

CORAM : R. G. KETKAR, J.
DATE : JANUARY 07, 2016

P.C. :

Heard Mr. Soni, learned Counsel for petitioner at length.

2. By this Petition under Article 227 of the Constitution of India, original plaintiff has challenged the judgment and order dated 05.12.2015 passed by the learned District Judge-13, Pune below exhibit-48 in Miscellaneous Application No.699 of 2012. By that order, the learned District Judge issued ad-interim stay to the execution of judgment and decree dated 21.10.2002 passed in Regular Civil Suit No.1543 of 1994 until further order to the extent of delivery of possession. The learned District Judge directed respondent No.15 to take steps for transposition of the parties so that the matter can be expedited in case the applicant remained absent.

3. Mr. Soni submitted that the Suit instituted by the petitioner for partition and separate possession is decreed on 21.10.2002. Respondents preferred appeal and since there was delay in filing the appeal, they took out application for condonation of delay on 03.02.2003, which was dismissed on 29.07.2011. Thereafter they filed Miscellaneous Application No.101 of 2003 for restoration of application

for condonation of delay, which was dismissed in default. He submitted that respondents are not diligent and since the decree is passed in the year 2002 for partition and separate possession, it is required to be executed. Respondents are delaying the execution of decree. He further submitted that as the application for condonation of delay, itself, is dismissed in default, in the eyes of law, no appeal is pending. The learned District Judge was, therefore, not justified in granting ad-interim stay.

4. I have considered the submissions advanced by Mr. Soni. I have also perused the material on record. Perusal of the impugned order shows that the learned District Judge has stayed the trial Court's decree to the extent of delivery of possession. In other words, the learned District Judge has not stayed partition proceedings. That apart, respondents filed application No.101 of 2003 on 03.02.2003 for condoning the delay of 42 days in filing the appeal. It is unfortunate that the said application remained pending for 8 years and was dismissed in default on 29.07.2011 for not taking steps in effecting service on respondents No.2 and 9 to 11 therein. Respondents thereafter filed exhibit-48 in Miscellaneous Application No.699 of 2012 for stay of the execution of the trial Court's decree. Having regard to the fact that exhibit-48 in Miscellaneous Application No.699 of 2012 is taken out for recalling order dated 29.07.2011 as also having due regard to the fact that the learned District Judge has granted ad-interim stay until further orders, I do not find that any case is made out for invocation of powers under Article 227 of the Constitution of India. This is more so, having regard to the fact that there is decree of partition, the learned District Judge has granted stay only to the extent of delivery of possession thereby permitting partition proceedings to go on.

5. In view thereof, Petition fails and the same is dismissed. It is however necessary to direct the learned District Judge to decide Miscellaneous Application No.101 of 2003 and Miscellaneous Application No.699 of 2012 as also consider confirmation of ad-interim order passed below exhibit-48 in Miscellaneous Application No.699 of 2012 preferably within 4 weeks from production of the authenticated copy of this order. Order accordingly.

(R. G. KETKAR, J.)

Minal Parab