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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.4753/2017

Sheshrao Panda Ekurge,
since died, through
Datta s/o Sheshrao Ekurge.
...Petitioner..

Versus

Bharat Namdeo Shendre & others.
...Respondents...

.....
Shri V.D. Gunale, Advocate for petitioner.
.....

CORAM: M.S. SANKLECHA, J.

DATE: 11.04.2017

ORDER :

1] This petition challenges the order dated 28.2.2017 passed by the learned District Judge-1, Nilanga Dist.Latur in appeal. The impugned order, while adjourning the final hearing of the appeal, vacated the stay of the execution proceeding commenced consequent to

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the order dated 27.8.2013 of the learned Third Joint Civil Judge, Junior Division, Nilanga, allowing suit of the respondents for possession of the suit property.

2] In the appeal filed by the petitioner from the order dated 27.8.2013 before the District Court at Nilanga, the petitioner had taken out an application for stay of the order passed by the trial Court dated 27.8.2013. By an order dated 6.9.2014, the District Court allowed the stay application and stayed the execution and operation of the decree dated 27.8.2013 passed by the trial Court pending disposal of the appeal. However, the same was subject to / conditional upon the appeal itself being disposed of before 31.12.2014.

3] On 28.2.2017, the petitioner sought time. The impugned order records the fact that the execution of the decree had been stayed pending appeal on the condition that the appeal itself would be disposed of before 31.12.2014. It further records that the appellant has not come forward to conduct the hearing and hence the stay needs to be vacated. Consequently, the impugned order while allowing the application for adjournment, vacated the stay of order dated 27.8.2013 granted on

6.9.2014.

4] Mr.Gunale, the learned counsel for the petitioner, states that the adjournment was sought as the petitioner's Advocate was before the School Tribunal. Therefore, the grant of adjournment sought would not justify vacating the stay of execution proceedings. Mr.Gunale further states that the petitioner would fully cooperate in expeditious disposal of the appeal and will not seek any further adjournment. In the circumstances, the impugned order be interfered with.

5] The order of the trial Court was stayed at the instance of the petitioner to the prejudice of the respondent on the condition of the appeal being disposed of before 31.12.2014. The appeal is still pending in the year 2017. The impugned order records the fact that the appellant has not come forward to conduct the hearing. In view of the fact that the order of the trial Court had been stayed on condition of disposal of the appeal before 31.12.2014, the petitioner should have made proper arrangement for representation at the appeal to ensure early disposal. Therefore, in the present facts, no interference is warranted under Article 227 of the

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Constitution of India in respect of the impugned order dated 28.2.2017.

6] Therefore, the petition is dismissed. However, the petitioner is free to make appropriate application to the learned District Judge for early hearing of the appeal. The application, if made, shall be considered and decided on its own merits.

(M.S. SANKLECHA, J.)