

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

WRIT PETITION NO. 5185 OF 2017

Sayyed Shafuddin Syed Kutubuddin ..PETITIONER

VERSUS

Aashabai Shriram Gadve and Others ..RESPONDENTS

....
Mr. P.V. Barde, Advocate for petitioner.

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**CORAM : M.S. SANKLECHA, J.
DATED : 18th APRIL, 2017**

ORDER :

1. This petition under Articles 226 and 227 of the Constitution of India challenges the order dated 22nd March, 2017 passed by the Joint Civil Judge, Junior Division, Ambajogai. By the impugned order, the petitioner's application to stay the Regular Civil Suit No. 159 of 2013 was rejected.

2. It is the petitioner's contention that the issues arising in the Suit No. 159 of 2013 in which he is a defendant are directly and substantially identical/similar to an earlier Suit bearing no. 41 of 2013 filed by the petitioner. This as it deals with the same subject matter and parties litigating under the same title.

3. Mr. Barde, learned Counsel for the petitioner further states that the Regular Civil Suit No. 159 of 2013 is kept for judgment tomorrow. Therefore he prays that not only rule should be issued but ad-interim stay of Suit No. 159 of 2013 also be granted.

4. The application for stay was made by the petitioner under Section 10 of the Code of Civil Procedure (CPC) on 22nd November, 2016. At the time when application was made for stay of Suit No. 159 of 2013, final arguments in respect Civil Suit No. 159 of 2013 were already over. The petitioner was party plaintiff to the Suit No. 41 of 2013 as well as defendant in Suit No. 159 of 2013 since 2013 onwards. However the petitioner did not move the application for stay of the Suit No. 159 of 2013 till 22nd November, 2016. In the meantime the Court had invested substantial time on Suit No. 159 of 2013 and even the arguments of the parties were over. Thus this application for stay after the hearing of the Suit No. 159 of 2013 was over is unconscionable.

5. Therefore this delay on the part of the petitioner not having expeditiously moved an application for stay of the Suit No. 159 of 2013 disentitles the petitioner to any relief in the extra ordinary jurisdiction of this Court.

6. Accordingly, petition is dismissed. No order as to costs.

(M.S. SANKLECHA, J.)

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