

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11462 OF 2016**

Shashikant Harishchandra Rane ...Petitioner

Versus

Maruti Shankar Gawand ...Respondent

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Mr.S.S.Patwardhan for the Petitioner.
Mr.S.V.Palsuledesai for the Respondent.

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**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: JULY 12, 2017**

P.C. :

1. Rule. Rule made returnable forthwith. By consent, petition is heard finally and disposed of at the stage of admission.
2. This petition is directed against the order dated 05.12.2015 passed by the learned District Judge-3, & Addl. Sessions Judge, Raigad, Alibag thereby rejecting the application below Exhibit-5 in Civil Appeal No. 202 of 2013.
3. The respondent/original plaintiff had filed a Regular Civil Suit No. 149 of 2007 for declaration and possession of his flat. He claims that the said flat belongs to him and possession of the same is not to be handed over to the petitioner/defendant. Pursuant to the agreement of sale dated 16.12.2003, the petitioner has played fraud on the respondent/plaintiff, as no consideration was paid to him against the suit flat. Therefore, the respondent/plaintiff had filed a Suit against the

petitioner/defendant. The said Suit was decreed on 26.07.2013, against which the petitioner/defendant had filed Civil Appeal No. 202 of 2013, which is pending before the District Court, Raigad, Alibag. During the pendency of the appeal, the respondent/original plaintiff has taken out the execution proceedings and therefore, the petitioner moved an application for interim stay before the learned District Judge No.3 and Additional Sessions Judge, Raigad, Alibag. The said application was rejected, vide order dated 05.12.2015. Hence, this Writ Petition.

4. The Suit was filed for possession and declaration, which was decreed. Against the order of possession and declaration, an appeal was filed by the petitioner/defendant. It is appropriate to hear and decide the Civil Appeal on merits, as the issue of possession and transfer of immovable property is involved. In view of the above, the learned District Judge, Raigad, Alibag is directed to expedite Civil Appeal, which is pending since 2013, till 30.09.2017. Till then, no coercive steps are to be taken by the respondent/plaintiff in the execution proceedings and the parties to appear before the concern Court on 24.07.2017 at 11.00 a.m. and to co-operate with the Court.

5. In view of the above, Writ Petition is disposed of.

6. Parties to act on an authenticated copy of this order.

(MRIDULA BHATKAR, J.)