

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11139 OF 2017

Arun Krushnaji Pawar	...	Petitioner
Vs.		
Mariyambi Ayub Mesman & Anr....		Respondents

Mr.Manmath S. Athalye, for the petitioner
Mr.V.S.Talkute, for the respondents.

CORAM: SMT.SADHANA S.JADHAV, J.
DATE : 11th October, 2017.

P.C.

Heard. Rule. Rule made returnable forthwith with consent of the parties.

2. The petitioner herein happens to be the original defendant in Regular Civil Suit No.140 of 2007. The said suit was decreed by a judgment and order dated 6.10.2008. The original plaintiff had then filed an application seeking execution of the decree which was registered at R.D. No.150 of 2012. It was at that stage, that original defendant i.e. the present petitioner had filed an application on 11.2.2009 requesting the Court to set aside the decree in Regular Civil Suit No.140 of 2007.

3. By an order dated 29.10.2014, the said application was dismissed for want of prosecution. It is pertinent to note that although the

application was dismissed by an order dated 29.10.,2014, thereafter the application seeking condonation of delay of 807 days was filed and there was a prayer for restoring the application which was dismissed for want of prosecution. During the pendency of the said application i.e. Misc. Application No.9, the present petitioner had filed an application seeking stay to the execution of Regular Darkhast No.150 of 2012.

4. After taking into consideration the conduct of the defendant in protracting the execution even after the suit was decreed, the application seeking stay to the execution was rejected by order dated 3.4.2017.

5. Both the counsel submit that the application seeking restoration as well as the condonation of delay application are not yet decided by the learned Court. The learned counsel for the petitioner submits that in the eventuality that the decree is executed during the pendency of the restoration and condonation of delay applications, the applications would become infructuous per-se and therefore prays that the order dated 3.4.2017 be quashed and set aside.

6. Taking into consideration the facts of the case, this Court is inclined to stay the execution till the applications are decided. In view of the fact that the applications seeking Restoration and condonation of delay are to be decided on or before 21.11.2017, The learned counsel for the

respondent i.e. decree-holder fairly submits that he would not execute the decree till then.

ORDER

- (i) The Petition is allowed to a limited extent.
- (ii) The learned trial Court is hereby directed to decide the applications in any case on or before 21.11.2017.
- (iii) Since the respondent has made a statement that he would not execute the decree till then, it would not be necessary to stay the execution.
- (iv) It is further clarified that this Court has not gone into the merits of the matter.

Petition stands disposed of.

[SMT. SADHANA S.JADHAV, J.]