

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.11701 OF 2015

Shri Pattherao Narsu Patil @ Rajaram
Dnyanu Patil

...Petitioner

vs.

Sou. Gangubai Anandrao Lad & Ors.

...Respondents

Mr. Satyajeet A. Rajeshirke for the Petitioner.

Mr. Bhushan Walimbe for Respondent No.2.

**CORAM : SMT. SADHANA S. JADHAV, J.
DATE : 9th November, 2017**

P.C.:

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

2. The Petitioner happens to be the original Defendant in Regular Civil Suit No.17/2000 The suit was decreed. Preliminary decree was drawn and sent to the District Collector for effecting partition as per the shares mentioned in the decree. Plaintiffs were claiming rights as co-parceners of the ancestral property. The Petitioner herein being aggrieved by the said judgment and order filed statutory Appeal along with the application seeking condonation of delay and has also filed application seeking stay of the execution and implementation of the second preliminary decree passed by the Court.

3. It appears that the original Plaintiffs were claiming their rights in the suit property under section 6A of the Hindu Succession (Amendment) Act, 2005. The second preliminary decree was executed on 26/10/2014. It was the contention of the Applicant that although the

receipt of possession is given the physical possession is not handed over and, therefore, he had filed application on 13/2/2015 seeking stay to the execution of the second preliminary decree. On 9/1/2015 the learned Apex Court had observed that from the records, the preliminary decree was executed on 26/10/2014 and, therefore, it is clear that the Petitioner has not approached the Court with clean hands.

4. Mr. Satyajeet A. Rajeshirke, the learned counsel for the Petitioner submits that the Court Receiver was appointed only on an application made by the Petitioner. The property was to remain in possession of the Court Receiver till the Appeal is decided or until further orders. Learned Counsel for the Respondent/original Plaintiff submits that share of the Plaintiff is not denied but the extent of the share of the Plaintiff is denied by the Appellant. The learned counsel for the Petitioner has relied on the judgment of the Hon'ble Apex Court in the case of ***Prakash & Ors. vs. Phulavati & Ors.***¹. The learned Appellate Court has rejected the application below Exh.5. According to the Petitioner, if the second preliminary application is allowed to be executed and possession is handed over by the Court Receiver, appeal would become infructuous and therefore he prays that the order dated 14/10/2015 passed by the learned District Judge, Islampur thereby refusing to stay execution deserves to be stayed for a limited period till the application seeking condonation of delay is decided.

5. In view of this, order dated 14/10/2015 passed by the District Judge, Islampur is stayed for a period of 6 weeks till the application seeking condonation of delay is decided.

6. Learned District Judge is hereby directed to decide the application seeking condonation of delay within 4 weeks from the date of

1 Civil Appeal No.7217/2013

receipt of this order.

7. Mr. Bhushan Walimbe, Learned counsel for the Respondent vehemently submits that the Petitioner has not moved the application seeking condonation of delay till today although he was protected by the orders of this Court by order dated 27/11/2015. It is submitted that it causes great prejudice to the rights of the original Plaintiff who are waiting execution of the decree which according to the learned counsel for the Respondent is already executed. Since the claim of the Plaintiff is not denied and it is only the extent of their share which is being disputed the order deserves to be stayed. The Petitioner is at liberty to file application afresh below Exh.5. All contentions of the parties are kept open.

8. The Appellate Court shall not be influenced by the observations made herein above as it was restricted on an interim application Exh.5 which was rejected even prior to condonation of delay.

(SMT. SADHANA S. JADHAV, J.)