

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

WRIT PETITION NO. 9947 OF 2017

D. Subodh and Company Agency Pvt. Ltd. ... Petitioner
V/s.
M/s. Poona Commercial Corporation & Ors. ... Respondents

Mr. S.R. Page for the Petitioner.
None for the Respondents.

CORAM : M.S. SONAK, J.

DATE : 12th SEPTEMBER, 2017.

P.C. :

1 Heard Mr. Page, learned counsel for the petitioner.

2 The challenge in this Petition is to the order dated 19.09.2016 by which the learned trial Judge has dismissed petitioner's application at Exh.42 seeking a stay on further proceedings in the enquiry for mesne profits as ordered in the judgment and decree made in Civil Suit No.306 of 2001.

3 Mr. Page, learned counsel for the petitioner, submits that the petitioner has already instituted Civil Suit No.259 of 2016 to question the decree made in Civil Suit No.306 of 2001 inter alia, on the ground that such decree was obtained by fraud. He submits

that in view of the pendency of such Suit, the enquiry in the matter of mesne profits is required to be stayed by invoking the provisions of Section 10 of the C.P.C.

4 It is not possible to accept the submission of Mr. Page. The decree Civil Suit No.306 of 2001 was challenged in Appeal and, thereafter, by instituting a Revision before this Court. In these two proceedings, the decree has not been set aside. Merely on the ground that the petitioner has subsequently instituted a Civil Suit claiming that the decree in Civil Suit No.306 of 2001 was fraudulently obtained, cannot, give rise to a question under Section 10 of the C.P.C. or entitle the petitioner for a stay on the enquiry to determine the mesne profits in terms of the decree in Civil Suit No.306 of 2001. The application has been rightly dismissed by the learned trial Judge and there is neither any jurisdictional error nor any perversity of approach, so as to warrant inference under article 227 of the Constitution of India.

5 Petition is, therefore, dismissed. There shall be no order as to costs.

(M.S. SONAK, J.)