

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

WRIT PETITION NO. 731 OF 2018

SHIVAJI PANDURANG JAWALE
VERSUS
RAJENDRA SADIPAN BANKAR

...

Advocate for the Petitioner : Shri Deshmukh H.D..

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 22nd January, 2018

Per Court:

1 The Petitioner is aggrieved by the order dated 28.06.2017 passed by the Trial Court, by which, the application Exhibit-46 filed by the Petitioner has been rejected.

2 The Petitioner has suffered the judgment and decree in Regular Civil Suit No.45/2013 dated 14.08.2013. The said judgment is said to be ex-parte. The Regular Civil Appeal has been preferred in 2017 and the Miscellaneous Application for condonation of delay of about four years, has been filed and the same is pending.

3 In the meanwhile, the Decree Holder has preferred Miscellaneous Application No.1/2015 praying for possession of the encroached portion and mense profit. The Petitioner prayed vide Exhibit-46 that the Trial Court should stay the said proceedings under Section 10

of the Code of Civil Procedure as the application for delay condonation is pending.

4 Shri Deshmukh, learned Advocate for the Petitioner, has strenuously criticized the impugned order. He has drawn my attention to the grounds formulated by him in the memo of the petition.

5 It requires no debate that the suit or proceedings cannot be stayed casually. Unless the ingredients prescribed under Section 10 are not fulfilled, there can be no stay to the proceedings. Merely because the Petitioner's application for condonation of delay is pending and the Petitioner has caused delay of practically four years in preferring the Regular Civil Appeal, the claim put forth by the Decree Holder seeking enquiry regarding the mense profit and necessary directions, cannot be stayed. The Trial Court has, therefore, rightly rejected the application Exhibit-46.

6 As such, this Writ Petition being devoid of merit is, therefore, dismissed.