

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

*CIVIL APPLICATION NO.132 OF 2016  
IN  
SECOND APPEAL NO.316 OF 2014*

Shri.Uday Ramrao Thorat & anr. ..Applicants.

V/s.

Shri.Sarjerao Krishnarao Kadam ..Respondent.

Mr.J Shekher a/w. Mr.Akshay Kalodia i/b. J Shekher & Co. for the Applicants.

Mr.T.S. Ingale i/b.Mr.Vikas Kolekar for the Respondent.

***CORAM : N.M. Jamdar, J.***

***DATED : 12 January , 2018.***

**P.C. :-**

. By this application, filed on 6<sup>th</sup> January, 2016, the Applicants-Appellants in the Second Appeal have sought stay of the judgment and order passed by the District Judge dated 12<sup>th</sup> February, 2014. Thus, the civil application for stay is filed almost two years after the order was passed by the learned District Judge.

2. In the suit filed by the Respondent–Plaintiff, the learned Civil Judge, Junior Division, Shirol has passed a decree on 23<sup>rd</sup>

December, 2005 and has restrained the Applicants-Appellants by an order of permanent injunction. The learned Civil Judge recorded a finding that the Respondent-Plaintiff proved his possession. Appeal filed by the Applicants-Appellants was dismissed by the learned District Judge by judgment and order dated 12<sup>th</sup> February, 2014 and the finding of fact was confirmed that the Respondent-Plaintiff is in possession. Reply is filed to the civil application. In the reply, it is stated that during the pendency of the suit, temporary injunction was granted in favour of the Respondent-Plaintiff and Miscellaneous Appeal filed by the Applicants-Appellants was dismissed.

3. Heard learned counsel for the parties.

4. Considering the fact that both the Courts have granted order of injunction recording a finding against the Applicants-Appellants that they are not in possession and that the application is filed after two years of the impugned judgment and order, no case is made out for grant of interim relief, which will amount to allowing the Second Appeal.

5. The learned counsel for Applicants-Appellants sought to contend that there is an ad-interim relief granted in this Civil Application on 21<sup>st</sup> December, 2007. I have perused order dated 21<sup>st</sup> December, 2017 passed by K. K. Tated, J, restraining the Respondent-Plaintiff from taking any coercive action in respect of

the arrest warrant. Therefore that was not an ad-interim order staying the injunction. It was in the context of an arrest warrant. In these circumstances, Civil Application is rejected.

5. The learned counsel for the Applicants submitted that hearing of Second Appeal be expedited. The Applicants-Appellants, like any other litigant, can always take out civil application for early hearing, which will be considered on its own merits.

6. As regards arrest warrant is concerned, the learned counsel for the Respondent-Plaintiff, on instructions, states that in view of the order passed today, arrest warrant will not be executed. Statement is accepted.

*(N.M. Jamdar, J.)*