

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3899 OF 2018

Narayan Baba Kharat (Since Deceased), Through Saraswati Narayan Kharat & Ors. V/s. Namdeo Dadasaheb Sanas & Anr.	 Petitioners Respondents
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Mr. Tushar M. Sonawane for the Petitioners.

Mr. Shailesh D. Chavan for Respondent No.1.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 2ND MAY, 2018.

P.C. :

1. Heard Mr. Sonawane, learned counsel for the Petitioners, and Mr. Chavan, learned counsel for Respondent No.1.

2. By this Writ Petition, filed under Article 227 of the Constitution of India, the Petitioners are challenging the order dated 31st January 2018 passed by District Judge-2, Baramati, thereby rejecting the application at "Exhibit-5" filed in Civil Miscellaneous Application No.99 of 2017, seeking stay to the execution of the 'Decree' dated 20th June 2015 passed in Regular Civil Appeal No.29 of 2011.

3. The application at “Exhibit-5” was filed by the present Petitioners on the count that, the Suit was filed by the Respondents for getting possession of the encroached portion. Petitioners had appeared in the said Suit, but failed to file written statement and, therefore, the Suit came to be dismissed on 1st December 2010. Thereafter, the Appeal came to be allowed on 20th June 2015. The Petitioners came to know about the same only when they received the notice of the execution proceedings. Thereafter, they have filed application for setting aside the ex-parte Judgment passed in the Appeal. Along with the said application, they have also filed application for condonation of delay and the stay. Instead of deciding the application for condonation of delay, it is submitted that, the Appellate Court has decided the application for stay to the execution proceedings and dismissed the same. The possession warrant is already issued and hence, it is requested that the impugned order passed by the Appellate Court, rejecting the stay to the execution of the ex-parte decree, needs to be quashed and set aside.

4. However, as rightly pointed out by learned counsel for the Respondents, it was the specific prayer of the Petitioners themselves to decide their stay application first, in the light of the fact that the execution warrant was issued. Accordingly, the Appellate Court has considered the said application first. The Appellate Court has also considered that the Petitioners did not bother to file written statement

in the Suit, though they had appeared therein. Thereafter, even the Appeal proceeded ex-parte, as the Petitioners did not appear in the Appeal, despite due service of notice. Thereafter, more than two years, the Petitioners have filed these applications for setting aside the ex-parte decree and for condonation of delay. In view thereof, the Appellate Court has thought it fit not to grant such relief of stay to the execution of the Decree.

5. In my considered opinion, having regard to the facts discussed above and the reason given by the Appellate Court, namely, the absence of diligence on the part of the Petitioners, the discretionary relief of stay to the execution of the possession warrant is rightly rejected by the Appellate Court. Hence, no interference is warranted in the said order in the writ jurisdiction. Writ Petition, therefore, stands dismissed.

6. It is needless to state that, the Appellate Court will decide the application for condonation of delay on its own merits.

[DR. SHALINI PHANSALKAR-JOSHI, J.]