

vks

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

**CIVIL APPLICATION NO.3113 OF 2018
IN
FIRST APPEAL NO.933 OF 2018**

Dilip Patel (decd) Sumati M Patil and ors	...	Appellant
V/s. Kashinath Shankar Bhosale (decd) through Nalima Sanjay	...	Respondent
Mr. P.K. Dhakephalkar, Senior Counsel, for appellant.		the
Mr. Pradeep Samant, for respondent No.1.		

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 11th OCTOBER, 2018.

P.C. :

1] Heard learned Senior Counsel for the appellant and learned counsel for respondent No.1.

2] This application is preferred seeking stay to the execution and implementation of decree dated 21.04.2018, passed in S.C.Suit No.9522 of 1991, by the City Civil Court, Dindoshi.

3] The perusal of the judgment passed by the trial Court clearly reveals that the Court Receiver was initially appointed by the said Court, by order dated 16.7.1993 and thereafter, by order dated 31st March, 1994 the appellant herein was appointed as an agent of

the Court Receiver. It was directed that the Court Receiver shall take physical possession of the suit gala from whomsoever found in possession and shall put the original defendant No.2 in possession of the suit gala. The plaintiff was accordingly directed to hand over the possession of the suit gala to defendant No.2.

4] Thereafter by the order dated 16.2.2006, it was observed that though defendant No.2 was put in possession of the suit gala as an agent of the Court Receiver, he failed to take proper care of the suit premises and it got rusted. Therefore, the object of appointing Court Receiver was frustrated and accordingly original plaintiff was directed to be again put in possession of the suit premises on depositing Rs.1,00,000/- and Rs.1,500/- per month as royalty.

5] It is submitted by learned counsel for respondent that this order, however, was not executed. It is further submitted by learned counsel for respondent-plaintiff that though the plaintiff had deposited an amount of Rs.1,00,000/-, the order remained to be executed as in the Appeal from Order which was preferred by the appellant herein, the hearing of the suit itself was expedited.

6] Now the hearing of the suit is complete and the decree is passed directing the Court Receiver to hand over the possession of the suit premises to the plaintiff, alongwith the inventory of articles lying in the custody of Court Receiver.

7] In view, thereof, as the trial Court has passed this order, in pursuance of the earlier orders and on appreciation of oral and documentary evidence produced by the parties, at this stage, no case is made out before this Court, for granting stay to the execution of the said decree.

8] Learned Senior Counsel for the appellant submits that he has no objection for the Court Receiver to put the respondent in possession of suit premises. His only contention is that the possession of the respondent should be as an agent of the Court Receiver and respondent should, as per the earlier order, to deposit an amount of Rs.1,500/- per month.

9] In view thereof, the Court Receiver is directed to hand over the physical possession of the suit premises to the respondent-plaintiff, as per order passed by the trial Court. However, the possession of the respondent-plaintiff will continue during the pendency of this appeal as an agent of the Court Receiver on the depositing of Rs.1,500/- per month in the Court.

10] The application is disposed off in above terms.

[DR.SHALINI PHANSALKAR-JOSHI, J.]