

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

WRIT PETITION NO.4272 OF 2018

**GIRDHARILAL HIRALALJI AGRAWAL
VERSUS
KISHANPRASAD MOTILAL DEVIDAN AND ANOTHER**

...
Advocate for the Petitioner : Shri S. S. Rathi
Advocate for the Respondents : Shri A. S. Bajaj
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CORAM : RAVINDRA V. GHUGE, J.

DATED : 21st JANUARY, 2019.

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PER COURT :

1. The petitioner, who is the original Appellant before the First Appellate Court, is an objection petitioner in RD No. 88/2015. Since his objections under Order XXI Rule 97 of the CPC were rejected, he has approached the Appellate Court by preferring RCA No. 61/2018. By order dated 18/04/2018, the Appellate Court has rejected application Exhibit 5 and has refused to stay the judgment and order dated 06/03/2018 and the suspension of the order of issuing a possession warrant. This Court has continued the order of *status quo* that was granted by the Appellate Court below Exhibit 22 dated 18/04/2018. Since then, the said order has been continued.

2. I have heard the learned Advocates for the respective sides. Shri Bajaj, learned Advocate submits that this petition deserves to be dismissed with heavy costs. A Stranger is trying to stall the execution proceedings. His objections under Order XXI Rule 97 of the CPC have been properly dealt with and rejected. Possession warrant has been issued by the executing Court after the property was identified by the decree holder.

3. The learned Advocate for the petitioner – Appellant, who is the objection petitioner, submits that the petition paper book in RCA No. 61/2018 has been prepared through court process. The record is also available with the Appellate Court.

4. In view of the above, I find that the Appellate Court could be directed to decide the Appeal within a particular time frame which will meet the ends of justice.

5. As such, this petition is disposed off. The ad-interim protection granted by this Court to the petitioner – Appellant on 26/04/2018 would continue only upto 31/03/2019.

6. The litigating sides would canvass their oral final submissions with the liberty to enter their written notes of submissions on or before 28/02/2019. The Appellate Court would then deliver its judgment in RCA No. 61/2018 on or before 31/03/2019. The Appellant shall extend co-operation to the Appellate Court and would not seek an adjournment.

7. Needless to state, all the contentions of the parties are kept open and the Appellate Court would decide the Appeal on its own merit without giving influenced by any observations made in the impugned order dated 18/04/2018.

8. Needless to state, the Appellant and respondent No.2 before the Appellate Court would not create third party interest or encumbrances on the properties which have been identified vide the possession warrant.

(RAVINDRA V. GHUGE, J.)

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