

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

WRIT PETITION NO.5312 OF 2019

APPASAHEB KARBHARI JAWALE AND ORS
VERSUS
MANDA SURYAKANT TUWAR @ MANDA APPASAHEB JAWALE AND
ANR

...

Advocate for the Petitioners : Shri Dhorde Vikram R.
Advocate for Respondent 2 : Shri A.S.Barhate Patil h/f Shri Chapalgaonkar
Shailesh S.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 09th October, 2019

Per Court:

1 I have heard the learned advocates appearing for the parties.

2 On 03.07.2019, I had passed the following order :-

- "1. The petitioners, who are the judgment debtors, are aggrieved by the order dated 03/04/2019 passed by the Appellate Court, vide which, the order passed by the same Court on 10/01/2019 has been modified and the executing Court is permitted to issue the precept under Section 54 of the Code of Civil Procedure and the District Collector, Ahmednagar is directed to divide the shares of the parties as per the partition, but refrain from handing over possession of the respective shares to the parties till RCA No. 02/2019 is decided. The petitioners are the Appellants before the said Appellate Court and have challenged the judgment and decree of the Trial Court.
2. The learned Advocate for the petitioners points out the following order passed by the Court on 10/01/2019 :-

"Perused application. There is no caveat filed in this application. The applicant wants to challenged the impugned decree by way of this appeal. Hence it will be justify to stay the execution of decree trial court be informed not to sent the precept collector Ahmednagar for partition till pendency of this appeal".

3. *It is, therefore, submitted that in the above backdrop, if the execution proceedings are concluded, the Appeal would be rendered infructuous. Similarly, if the shares are divided/ demarcated by the District Collector and if the petitioners succeed in the Appeal, the said exercise would be in futility.*
4. *Issue notice to the respondents, returnable on 14/08/2019.*
5. *Copies of the petition paper book for issuance of notices, shall be supplied on or before 10/07/2019, failing which, this petition shall stand dismissed without reference to the Court on 11/07/2019.*
6. *The learned Advocate for the petitioners submits that the Collector's office has still not received the precept and the impugned order is still not implemented. He makes this statement on instructions. Considering that the said statement has been made with on solemnity, the impugned order shall stand stayed until further orders in this petition."*

3 Having heard the submissions of the learned advocates for the respective sides, I find that it would be appropriate to direct the Appellate Court to decide RCA No.2/2019, which was filed on 01.01.2019, expeditiously. Until the decision in the appeal, the execution proceedings could be adjourned.

4 In view of the above, this Writ Petition is partly allowed. The impugned order dated 03.04.2019 is set aside and the application exhibit

5 shall stand disposed off by maintaining the first order passed by the Appellate Court on 10.01.2019 on exhibit 5. The said order dated 10.01.2019 would continue till the decision in the appeal or till 31.03.2020, whichever is earlier.

5 The petitioner/ appellant shall tender a private appeal paper book before the Appellate Court on or before 30.11.2019 and shall not seek extension of time. If such appeal paper book is not deposited, the order dated 10.01.2019 passed by the Appellate Court would stand automatically vacated.

6 After the appeal paper book is deposited as per the above directions, the parties shall advance their oral submissions on or before 15.02.2020 so as to enable the Appellate Court to decide the appeal on or before 31.03.2020. Any application filed for seeking appointment of the court commissioner or under Order 41 Rule 27 of the Code of Civil Procedure or any such application, shall be considered along with the main appeal.

7 All contentions of the litigating sides are kept open to be considered by the Appellate Court on their own merits.