

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

WRIT PETITION NO.784 OF 2019

Laxman Jalinder Damare ... Petitioner
Vs.
Chandrashekhar Ravensiddha Gajbhar
and Ors. ... Respondents

Mr. Samir Kumbhakoni for the Petitioner.
Mr. Utkarsh Desai I/b. Prashant Bhavake for the Respondent No.1.

CORAM : M. S. KARNIK, J.
DATE : 19th SEPTEMBER, 2019.

P. C.:

1. Heard learned counsel for the petitioner.
2. By this petition filed under Article 227 of the Constitution of India the petitioner challenges an order dated 27.8.2018 passed by the First Appellate Court below Exhibit 15 in Regular Civil Appeal No.66 of 2016. The petitioner is the original defendant No.1. The respondent No.1 filed a suit for specific performance for execution of the sale deed on the basis of an agreement of sale dated 19.01.2002 in respect of the suit property. The Trial Court decreed the suit. The Trial Court directed

defendant Nos.1 to 3 to execute the sale deed in favour of respondent No.1 in respect of the suit land within a period of one month. Thereafter the petitioner filed Regular Civil Appeal No.66 of 2016 before the First Appellate Court. The application Exhibit 15 was filed for stay of the judgment and decree of the Trial Court. The Appellate Court by the order impugned rejected the application for stay on the ground that the order passed by the Trial Court prima facie appears to be well reasoned. According to learned Appellate Court, staying the decree would render it to be a paper decision for plaintiff. Learned counsel for respondent No.1 argued in support of the impugned order.

3. In my opinion, the order passed by the Appellate Court calls for interference. The Appeal is yet to be heard on merits. The petitioner is in possession of the suit property. It is the contention of the learned counsel for the respondent No.1 that the execution proceedings have been filed and even the sale deed has been executed. The date for handing over possession is fixed before the Executing Court on 23.9.2019. Considering that the suit for specific performance of the agreement has been decreed

against which the petitioner has filed substantial Appeal before the Appellate Court, during the pendency of the Appeal, the possession of the petitioner deserves to be protected.

4. However considering that the Appeal is filed in the year 2016 and there is decree in favour of the plaintiff, the Appellate Court is requested to hear and dispose of the Appeal expeditiously preferably within a period of six months from today. As the petitioner is still in possession of the suit property, the application Exhibit 15 deserves to be allowed. The order passed by the Appellate Court is set aside. All contentions are kept open.

5. The petition is allowed with no order as to costs.

(M. S. KARNIK, J.)