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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1775 OF 2019

Abdulmajid Allabaksha Attar (deceased)
through LRs. & Ors. ..Petitioners.

V/s.

Mahammagaous Amirhamja Shaikh
(deceased) through LRs. ..Respondents.

Mr.Nagesh Y.Chavan for the petitioners.

Ms.Anjali R.Shiledar-Baxi for respondent Nos.1A to 1D.

CORAM : M.S.SONAK, J.

DATE : MARCH 26, 2019

P.C.:-

Heard Mr.Chavan, learned counsel for the petitioner and
Ms.Baxi, learned counsel for respondent Nos.1A to 1D.

2. Challenge in this petition is to the order dated January 2,
2019 made by learned trial Court, rejecting the application for interim
relief pending appeal. The appeal itself is against the deemed decree
made in the execution proceedings. The petitioners had taken out
obstruction proceedings which came to be decided against the
petitioners. Against the said decision, the petitioners instituted appeal
and pending the appeal, applied for interim relief. By the impugned

order, interim relief has been declined to the petitioners.

3. Ms.Baxi, learned counsel for the decree holder points out the execution of the decree is completed and in pursuance of the same, the decree holder has already recovered the possession. Ms.Baxi submits that the suit premises is locked.

4. The record indicates that the execution is completed and the suit premises has been delivered to the decree holder. In such circumstances, if the suit premises are locked, it does not mean that the decree holder is not in possession of the suit premises, which should be delivered to the decree holder in accordance with law.

5. Mr.Chavan, learned counsel for the petitioners submits that since the appeal is pending, the status quo is required to be restored as otherwise, the appeal itself might become infructuous. The appeal might become infructuous, because, if the petitioners ultimately succeeds in the matter, the petitioners will always have the liberty to apply for restoration, which is provided under section 144 of the Code of Civil Procedure.

6. However, there is no case made out to interfere with the impugned order now as the execution is already completed. This is certainly not a case to stay the impugned order and that too at the interim stage i.e. during the pendency of the appeal.

7. Accordingly, the writ petition is dismissed with liberty as

aforesaid to apply for restoration in case the petitioners' appeal ultimately succeeds. There shall be no order as to costs.

8. The Appeal Court to decide the appeal on its own merits without being influenced by either the objections in the impugned order or the present order or the fact that the decree at present stands fulfilled as on today.

9. All contentions of the parties are left open to be decided by the Appeal Court.

10. All concerned to act on the basis of an authenticated copy of this order.

(M.S.SONAK, J.)