

Tandle

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11790 OF 2019

Shankar Dattu Patil and Ors.

... **Petitioners.**
(Orig. Defendants)

Versus

Sugriv Baban Buchade and Anr.

... **Respondents.**
(Respondent No.1
Orig. Plaintiff)

.....

Mr. S. G. Deshmukh i/b R. M. Haridas for the Petitioners.

Mr. J. P. Kharge for the Respondent No.1.

.....

CORAM : A. S. GADKARI, J.

DATE : 26th NOVEMBER, 2019

P. C. :

1. By the present petition under Article 227 of the Constitution of India, the petitioners / original defendants have impugned Orders dated 22nd October 2019 passed below Exhibit - 6 and 12 in Civil Miscellaneous Application No. 23 of 2019 and below Exhibit-20 in Regular Darkhast No. 131 of 2018 passed by the learned 7th Joint Civil Judge, Senior Division, Sangli, thereby dismissing both the applications preferred by the petitioners.
2. Heard Mr. Deshmukh learned counsel for the petitioners and Mr. Kharge, learned counsel for the respondents. Perused the entire record annexed to the petition.
3. The record indicates that, the Special Civil Suit No. 81 of 2016 instituted by the respondent No.1 was decreed ex-parte against the petitioners by the learned 7th Joint Civil Judge, Senior Division, Sangli by its

Judgment and Decree dated 1st November 2018. The respondent No.1 thereafter instituted Regular Darkhast No. 131 of 2018 for execution of the said decree passed in his favour. The petitioners after getting knowledge of passing of an ex-parte decree against them preferred Civil Miscellaneous Application No. 23 of 2019 under Order 9 Rule 13 of the Code of Civil Procedure (for short “the Code”) on 07th February 2019 for setting aside the said decree. There was a delay of about two months in preferring the said application and therefore the petitioners also filed an application for condonation of delay in the said Civil Miscellaneous Application.

4. It is to be noted here that, both the Applications are pending for final adjudication on the file of the learned Trial Court. As the respondent No.1 has filed the said Regular Darkhast No. 131 and the proceeding for execution of the Judgment and Decree passed by the Trial Court was in progress, the petitioners filed applications below Exhibit 6 and 12 in Civil Miscellaneous Application No.23 of 2019 for stay to the effect and operation of the decree passed by the Trial Court dated 1st November 2018 in Special Civil Suit No. 81 of 2016. The petitioners also filed an application below Exhibit 20 in Regular Darkhast No. 131 of 2018 for stay of the execution of the proceedings till the decision of Civil Miscellaneous Application No. 23 of 2019.

5. The Trial Court by its impugned Order has rejected both the applications. As noted earlier, Civil Miscellaneous Application No. 23 of 2019 filed by the petitioner under Order 9 Rule 13 along with an application

for condonation of delay filed therein is pending for final adjudication on the file of the learned Trial Court.

6. In view thereof, it was imperative for the respondent No.1 not to proceed with the execution proceedings till the decision of the said application. Assuming for the sake of argument, the application preferred by the petitioner under Order 9 Rule 13 is allowed by the Trial Court and in the meantime if the execution proceedings are completed, it will give rise to multiplicity of litigation. It is therefore necessary that, the execution proceedings initiated by the respondent No.1 be stayed till the decision of the Miscellaneous Civil Application No. 23 of 2019 preferred by the petitioners.

7. In view thereof, the learned Civil Judge, Senior Division, Sangali, seized of Misc. Civil Application No. 23 of 2019 and condonation of delay application filed therein, is hereby directed to dispose off the the said applications preferably within a period of six months from today.

8. Till the said Civil Application No. 23 of 2019 is decided, the proceedings of Regular Darkhast No. 131 of 2018 initiated by the respondent No.1 is stayed.

9. Writ Petition is allowed in the aforesaid terms.

10. All the concerned to act on authenticated copy of this Order.

(A. S. GADKARI, J.)