

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL WRIT PETITION NO. 75 OF 2019

Rajendra R. Chaplot .. Petitioner
vs.
Prakash Trambak Dabake .. Respondent

Mr. Girish Paryani I/b A& G Legal Associates for the
Petitioner.
Mr. R.M. Haridas for the Respondent.

CORAM : R. G. KETKAR, J.
DATE : 22nd JULY 2019.

P.C. :-

1] Heard Mr. Girish Paryani, learned counsel for the
petitioner and Mr. R.M. Haridas, learned counsel for the
respondent at length.

2] By this petition under Article 227 of the Constitution of
India, the petitioner, hereinafter referred to as the defendant,
has challenged the order dated 6th April 2018 below Exhibit-
15 in Miscellaneous Application No. 303 of 2016 as also the
order dated 30th November 2018 passed by the learned Trial
Judge below Exhibit-16 in Regular Darkhast No.44 of 2016.
By order dated 6th April 2018, learned Trial Judge has
rejected the application by observing that the petitioner
wants to stay the darkhast proceedings. This application is

placed in proceedings under Order IX Rule 13 of CPC and not in Darkhast proceedings. The petitioner did not produce any documents showing in darkhast whether possession warrant is issued or not ? In view thereof, learned Trial Judge rejected the application being devoid of merits.

3] By order dated 30th November 2018, learned Trial Judge rejected the application at Exhibit-16 on the ground that though the petitioner has filed the application in the year 2016 for condonation of delay, the delay is not condoned and till date, the decree holder is deprived of fruits of the decree. There is no provision for staying the execution proceedings. The Executing Court cannot stay its own decree for reasons mentioned in the application.

4] Rule. Mr.Haridas waives service on behalf of the respondent. At the request and with the consent of the parties, Rule is made returnable forthwith and the petition is taken up for final disposal.

5] By order dated 18th July 2019 in Writ Petition No. 7952

of 2019, delay of 189 days in filing the application for setting aside the *ex-parte* decree is condoned.

6] With assistance of the learned counsel for the parties, I have perused the impugned order. I have also perused the prayers of the application made by the petitioner for setting aside the *ex-parte* decree passed in Regular Darkhast No. 44 of 2016. The petitioner has also prayed for stay of the decree passed by the learned Trial Judge.

7] In view thereof, by consent of the parties, the petition is disposed of in the following terms.

(a) There shall be stay to the execution and operation of the judgment and decree dated 14th January 2016 in Regular Civil Suit No. 451 of 2014, pending the hearing and final disposal of the application for setting aside the *ex-parte* decree, subject to the following conditions:

(i) The petitioner shall neither create any third party interest nor part with possession of the suit premises;

- (ii) The petitioner will clear the arrears of rent from January 2019 to May 2019 and will go on paying the rent at the rate of Rs.150/- per month to the respondent/plaintiff till disposal of the application for setting aside the *ex-parte* decree;
- (b) Learned Trial Judge is requested to dispose of the application for setting aside the *ex-parte* decree as expeditiously as possible;
- (c) It is made clear that the grant of interim stay shall not construed as an expression on merits:
- (d) Rule is made absolute in the above terms with no order as to costs;
- (e) All concerned to act upon an authenticated copy of this order.

(R. G. KETKAR, J.)