

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

910. WRIT PETITION NO. 3642 OF 2018
WITH CA/4151/2018 IN WP/3642/2018

RAJKUMAR SHIVRAJ MATHPATI AND OTHERS
VERSUS
SUNIL CHANDRAKANT TANDALE AND OTHERS

Mr. Subodh P. Shah, Advocate for petitioners

Mr. P.R. Tandale, Advocate for respondents N. 1, 2 & 5

CORAM : ROHIT B. DEO, J.

DATE : 29th January, 2020

PER COURT :

1. I have heard the learned Counsel for the petitioners and the learned Counsel for respondents No.1, 2 & 5, who appeared on caveat, at length.

2. The District Judge, Udgir, has refused to stay execution of the decree, vide order dated 22nd January 2018.

3. Irrefutably, the execution proceedings were initiated in 2002 and it is only in 2014 the petitioners were noticed and since then the petitioners appear to have made efforts to challenge the decree, albeit, by taking recourse to wrong remedy. The petitioners have purchased the suit property during the pendency of the litigation and while they are bound by the judgment and decree,

they could have preferred an appeal, which they have ultimately done. However, the petitioners chose to prefer objections in the execution proceedings, which were rightly rejected since they are beyond the scope of the provisions of Order XXI of C.P.C.

4. The appeal is preferred beyond limitation and an application for condonation of delay is preferred. It appears that the appeal is not accompanied by an application for seeking leave to appeal. Shri Subodh Shah, learned Counsel for the petitioners, states that if protected, such application shall be immediately preferred.

5. Learned Counsel for the caveators Shri Tandale vehemently is opposing for grant of stay to the judgment and decree. The learned Counsel for the cavators, Shri Tandale, is right in the submission that the decree holders are yet to enjoy the fruits of the decree, which is passed way back in the year 1992. However, one cannot be unmindful of the fact that while the decree was passed in the year 1992, the execution proceeding which was dismissed and then restored and was registered in the year 2002 and the petitioners were noticed in the year 2014. In this backdrop, in response to a Court query, learned Counsel Shri Tandale fairly states that, at the most, the decree holders shall not execute the decree for a period of 15 days from the date of

appearance of the parties and the Appellate Court may be directed to decide the application for condonation of delay, within the said period.

6. The submission is fair in the factual matrix.

7. The order impugned is set aside.

8. The parties are directed to appear before the Appellate Court on 3rd February 2020 and the application for condonation of delay shall be positively decided within 15 days from the date of appearance of the parties. The statement of learned Counsel Shri Tandale that for 15 days from the date of appearance, the decree shall not be executed, is recorded. In fairness to Shri Tandale, it must further be recorded that the statement is also that consent shall not be given for any further extension.

9. The petition is disposed of in the aforestated terms.

10. In view of disposal of the petition, pending civil application stands disposed of.

11. Authenticated copy of the order be provided to the learned Counsel for both the parties, as per rules.

(ROHIT B. DEO)
JUDGE