

ISM

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 641 OF 2021

Smt. Vatsalabai Baban Dhumal

....Petitioner

V/s.

Baban Jaywant Kad and Ors

....Respondents

Mr. Venkatesh A. Shastry for the Petitioner

Mr. Sushant Prabhune for Respondents

CORAM : NITIN W. SAMBRE, J.

DATE: FEBRUARY 23, 2021.

P.C.:

1] This Petition is by Deree-holder in R.C.S. No. 1076 of 2008.

2] Respondent feeling aggrieved, preferred an Appeal which was time barred and as such, alongwith Application for condonation of delay, Application Exh. 8 was taken out seeking stay to the execution of the Judgment and Decree which came to be allowed vide impugned order dated 21/10/2020.

3] Shri. Shastry, learned counsel appearing for original Plaintiff-Decree holder while questioning the order impugned would urge that there is no express provisions in Code of Civil Procedure, 1908 which can be expressly exercised for staying the Decree for injunction. According to him, as a consequence of stay to the Decree for injunction, Respondent by using the said order might dispossess the Petitioner. Apart from above, the contentions are, in case if the delay is condoned, same order would operate.

4] Counsel for the Respondent would support the order impugned on the ground that there are sufficient reasons furnished therein justifying the order of grant of stay to the execution of the Decree.

5] Considered rival submissions.

6] Right of an Appeal in favour of Respondent is a substantive right. An Appeal is a continuation of the Suit. Appellate proceedings under Section 96 are governed in accordance with the procedure laid down under Order XLI of CPC and Rule 5 there of contemplates

powers with Appellate Court to stay the Decree, however, such powers has to be exercised by the Appellate Court in case of grant of stay by furnishing appropriate reasons.

7] With the assistance of respective counsel, I have perused the reasons furnished in the order impugned wherein the Appellate Court has stayed the execution of Decree passed in Special Civil Suit No. 1076 of 2018 till the decision on the Application for delay condonation.

8] I am informed that parties to the proceedings i.e. condonation of delay proceedings are already served.

9] In the aforesaid background, in my opinion, no interference is called for in extraordinary jurisdiction.

10] Petition fails, stands dismissed.

11] Appellate Court is directed to conclude the hearing of the delay condonation Application within period of one month from the date of production of this order.

[NITIN W. SAMBRE, J.]