

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.13245 OF 2017

Mr. Vinod Manohar Deshpande Petitioners
(since deceased) represented thru'
LRs Smt. Gitanjali Vinod Deshpande
& Ors.

Vs.

Mr. Satish Eknath Chavan Respondent

Mr. Agasti Ashok Vibhute for Petitioners.
Mr. Nikhil R. Vidwans for Respondent

Coram : NITIN W. SAMBRE, J.
Date : 24TH FEBRUARY, 2021

P.C.:

1 This petition is by the Defendants to the suit for specific performance being Regular Civil Suit No. 3849 of 2012, the Petitioners suffered a decree on 15th October, 2016 passed by the learned 8th Civil Judge, Junior Division, Pune. An appeal being Civil Appeal No. 73 of 2017 is pending adjudication at the behest of the Petitioners, in which an application for grant of stay to the execution of decree under the

provisions of Order XLI, Rule 5, C.P.C. came to be rejected vide impugned order dated 8th August, 2017.

2 The submissions of learned counsel for the Petitioners-Appellants are, the substantive appeal against the decree for specific performance is pending consideration. The appeal is a substantive right created by the statute and the same is in continuation of the suit. The Appellant has every right to claim stay to the execution, in view of Order XLI Rule 5, C.P.C. subject to satisfaction of the Court. His further contention is, the Appellant is in possession of the suit property. Even if there was an agreement, Exhibit 29 between the parties, the same was only for paper purpose and was never to be acted upon. Learned counsel as such would urge that if the decree is executed, his appeal can be rendered infructuous.

3 Counsel for decree-holder supports the order impugned.

4 I have considered rival submissions.

5 The Petitioner-Defendant has not disputed his signature on the agreement of sale, Exhibit 29. So far as his plea about an additional

oral agreement not to act upon and agreement Exhibit 29 is concerned, I hardly see any pleadings in support thereof. As such, the trial Court has rightly not framed any issue based on the said submissions.

6 Apart from above, this Court needs to be conscious to the fact that the decree-holder has deposited entire amount of consideration, as such the decree was not stayed by the Court below i.e. appellate Court, so also by this Court for last almost about five years.

7 In the aforesaid backdrop, in my opinion, no case of interference in extra ordinary jurisdiction is made out. The petition fails. Dismissed.

(NITIN W. SAMBRE, J.)