

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

WRIT PETITION NO.2455 OF 2022

**LAXMAN DEVRAM PATIL AND OTHERS
VERSUS
ARJUN DEVRAM PATIL AND OTHERS**

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Advocate for Petitioners : Mr. Atmaram J. Patil
Advocate for Respondent No.1 : Mr. N. R. Dayama
Advocate for Respondent No.3 : Mr. G. A. Kulkarni

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 04TH APRIL, 2022

PER COURT :

1. The petitioners are aggrieved by the order dated 07-01-2022, passed by the District Judge-2, Jalgaon, below Exhibit-6 in Civil Misc. Application No.309/2021, thereby rejecting the application filed by the petitioners seeking stay to the execution of decree.

2. Respondent No.1 filed Special Civil Suit No.104/2014 seeking partition and separate possession of the suit properties mentioned in the plaint. The trial Court decreed the suit on 12-12-2018. Respondent thereafter filed execution proceedings bearing Misc. Civil Application No.131/2019 on 12-03-2019. The petitioners thereafter challenged the judgment and decree passed in Special Civil Suit No.104/2014, by filing appeal along with the delay condonation

application i.e. Civil Misc. Application No.309/2021. Along with the delay condonation application the petitioners have also filed application seeking stay to the execution proceedings. The stay application was resisted by the respondents by filing written say. The appellate Court rejected the application for stay holding that the petitioners have failed to make out sufficient ground to entertain the stay application, the petitioners have failed to prove *prima facie* case and balance of convenience is not in favour of the petitioners. Even the registration number of execution proceedings is not mentioned by the petitioners.

3. Having heard the rival submissions of the learned advocates for the respective parties and after perusing the documents placed on record, I am unable to accept the arguments of the learned advocate for petitioners that the trial Court has recorded contradictory findings and since substantial appeal is filed by the petitioners, the impugned judgment and decree needs to be stayed till the final decision of the appeal or at least till the delay condonation application filed by petitioners is decided.

4. Admittedly, the decree for partition and separate possession of the joint family properties is passed which is sought to be executed by the respondents. The decree is passed after hearing the petitioners and

the trial Court appears to have passed a well reasoned order. The petitioners have failed to make out *prima facie* case and to show that balance of convenience is in their favour and if the stay is not granted irreparable loss would be caused to them. In that view of the matter the appellate Court was justified in rejecting the said application filed by the petitioners. There is no illegality or perversity in the order impugned in the present petition. No case is made out for interference in the impugned order in extraordinary writ jurisdiction. The writ petition being devoid of merits is dismissed.

(NITIN B. SURYAWANSHI, J.)