

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.11889 OF 2022**

USHA YOGESH BELGUDE THROUGH ITS POWER OF
ATTORNEY KANHAIYYALAL LAXMANRAO GURELE
VERSUS
HIRABAI SHAMBHU FULARULE AND ANOTHER

...

Mr. Muhammed Aseem h/f Mr. Sayyed Tauseef Yaseen, Advocate
for the Petitioner.

...

**CORAM : SANDEEP V. MARNE, J.
DATED : 29th NOVEMBER, 2022.**

PER COURT:-

1. The petitioner challenges order dated 05.08.2022 passed by the Ad-hoc District Judge-1, Beed thereby rejecting her application for expediting the hearing of the Appeal.

2. The petitioner has succeeded in the suit and defendant nos.1, 2 and 4 are directed to deliver possession of the suit property to plaintiff/petitioner within two months from the date of the decree. The defendant nos.1, 2 and 4 have preferred Appeal before the District Court and filed application for stay. On an application for stay on which the District Court proceeded to pass following order on 20.02.2021:

“1. The application Exh.5 is disposed of with following directions.

- i) On next date both sides learned Advocates to argue on the appeal itself.
- ii) Respondent No.1 or her learned Advocate to file an undertaking that till the disposal of appeal no execution proceeding will be filed by the respondent No.1 against the appellants in respect of decree passed by the Trial Court in R.C.S. No.127/2013.

2. No order as to costs.”

3. Thus by creating an impression that the appeal itself would be heard on the next date of hearing, the Appellate Court directed petitioner to file an undertaking not to press execution proceedings. Though this arrangement was done on 20.02.2021, apparently the appeal is yet to be taken up for hearing. The petitioner/plaintiff in the meantime is bound by the undertaking.

4. The learned counsel for petitioner submits that petitioner/plaintiff be relieved from the undertaking filed before the Appellate Court, so that she is in a position to execute decree in the event the Appellate Court is unable to hear the Appeal.

5. Considering the nature of the order that I propose to pass it is not necessary to issue notice to respondents in the present petition. Perusal of the order passed by the Appellate Court dated 05.08.2022 would indicate that the Appellate Court has completely ignored the order dated 20.02.2021. The petitioner/plaintiff was directed to file an undertaking for pressing the execution proceedings on an express undertaking that the appeal itself was to be heard on the next date of hearing. In such circumstances, instead of relieving petitioner/plaintiff from the undertaking and instead of permitting her to proceed ahead with the execution proceeding, it would be appropriate if the Appellate Court is requested to expedite the hearing of the Appeal.

6. I accordingly proceed to pass following order:

ORDER

- a. The order dated 05.08.2022 passed by the Ad-hoc District Judge-1, Beed is set aside. The Appellate Court is

requested to hear the appeal bearing R.C.A. No.09/2021 as expeditiously as possible and preferably within a period of two months from today.

- b. With the above directions, writ petition is disposed of.

(SANDEEP V. MARNE)
JUDGE