

SPChauhan

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

CIVIL APPLICATION NO. 5200 OF 2022
IN
SECOND APPEAL NO. 186 OF 2022

Dnyaneshwar Dipchand Jogi ... Appellant

Versus

Sanjay Trambak Kulkarni ... Respondent

....
Mr. Amol Gandhi h/f. Mr. P.P. Mandlik – Advocate for Appellant
Mr. A.J. Patil – Advocate for Respondent
....

CORAM : GAURI GODSE, J.
DATE : 13th February, 2023

PER COURT :

1. This Application is filed for stay to the execution operation of the impugned judgment and decree as well as seeking an order of injunction restraining the respondents from interfering the possession of the applicant over the suit property.
2. Since, the Second Appeal is already admitted, it will be necessary to pass interim relief during the pendency of the Second Appeal. So far as decree of cancellation of the sale deed is concerned, Second Appeal is already admitted on the question of law with respect to the title. Hence, during the pendency of

the Second Appeal, there will be interim relief of stay in terms of prayer clause 'c', which reads thus :

“c. Pending hearing and final disposal of this Civil Application and Second Appeal the effect and operation of Judgment and Decree dated 02/02/2021 in Regular Civil Appeal No. 33/2018 passed by learned District Judge-2, Bhusawal, and the Judgment and Decree Dated 14/03/2018 passed by the learned Civil Judge Senior Division, Bhusawal, in Special Civil Suit No. 181/2014, may kindly be stayed.”

3. There was no injunction granted protecting the possession of the applicant over the suit property during the pendency of the proceedings. In absence of there being any findings with respect to the possession in favour of the applicant who is defendant in the original suit, there cannot be any relief of injunction in favour of appellant. However, considering the nature of dispute, to avoid any multiplicity of proceedings, during the pendency of the Second Appeal the respondents as well as the applicant will not create any third party interest in the suit property.
4. Civil Application is disposed of in above terms.

**[GAURI GODSE]
JUDGE**