

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4466 OF 2023

Shesherao S/o Nivruttirao Tamba Petitioner

Versus

Prashant Marotirao Ingole Respondent

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Mr. Chaitanya V. Dharurkar, Advocate for the Petitioner

Mr. Milind K. Deshpande, Advocate for Respondent

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 19th APRIL, 2023

ORDER :

1. The grievance of the petitioner is that in spite of stay granted in his favour by the Appellate Court in Regular Civil appeal No.34 of 2021 vide order dated 26/09/2022, and the same is recorded by the Appellate Court in its order dated 14/02/2023, the Executing Court is proceeding with execution in Special Darkhast No.25 of 2019.

2. Having heard the learned advocate for the petitioner and the learned advocate for the respondent, and on going through the memo of writ petition, annexures thereto, and the impugned order, in my opinion, the writ petition is misconceived, as in fact the order impugned in the present petition is in favour of the petitioner.

3. The petitioner filed application Exhibit-19 for staying the execution of decree passed in Special Civil Suit No.28 of 2014 dated 05/03/2019 by the Trial Court.

4. It is a matter of record that in the appeal, vide order dated 26/09/2022, the Appellate Court had passed the following order:

"Perused application & affidavit. Heard, Ld. Advocate for appellant considering his submissions & in the interest of justice, further execution of the decree is stayed till further orders. Appellant to serve notice of this application & appeal to the respondent by R.P.A.D. within two days of order. Copy of notice & affidavit of sending such notice by R.P.A.D. to respondent on correct address."

It is thus clear that the Appellate Court has already granted stay in favour of the petitioner, which is to operate until further orders.

5. In spite of this, the petitioner had moved application Exhibit-19, and in the order impugned in the present petition, the Appellate Court has observed:

"This Court vide order dated 26.09.2022 passed below Exh.6 in M.C.A. No.294/2022 has already stayed the execution of decree under appeal till further orders and the appeal/matter was fixed for final hearing"

6. The petitioner makes a grievance that respondent has moved application Exhibit-32/D in Special RD No.25 of 2019 (Exhibit-J, Page 59), and the Executing Court is proceeding with the execution in spite of stay granted by the Appellate Court.

7. The petitioner ought to have brought the order dated 26/09/2022, and the order impugned in the present petition, to the notice of the Executing Court, and the Executing Court would have stayed its hands in view of the stay granted by the Appellate Court.

8. In these peculiar facts, no merit is found in the petition.

9. The writ petition is therefore disposed of with direction to the Appellate Court to decide the appeal within three months from the date of receipt of writ of this order.

10. Needless to mention that in view of stay granted by the Appellate Court, the Executing Court shall not proceed with the matter till decision of the Appellate Court.

11. The petitioner and respondent shall co-operate in expeditious disposed of the appeal.

[NITIN B. SURYAWANSHI]
JUDGE

S.P. Rane