

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

**WRIT PETITION NO. 8977 OF 2022**

Dwarkadas Janardhan Kulthe and others.. Petitioners

**Versus**

Sheelabai Santukram Dahale and others .. Respondents

Shri S. P. Katneshwarkar, Advocate for the Petitioners.

Shri M. M. Patil Beedkar, Advocate for the Respondent No. 1.

**CORAM : SHARMILA U. DESHMUKH, J.**

**DATE : 28TH FEBRUARY, 2023.**

**FINAL ORDER :**

. The challenge in the petition is to the order dated 19<sup>th</sup> July, 2022 passed below Exhibit 05 in R.C.A. No. 04 of 2020, wherein the petitioners' application for stay of execution of the decree dated 12<sup>th</sup> December, 2019 came to be rejected.

2. R.C.S. No. 140 of 2010 was instituted by the respondent No. 1 seeking partition and separate possession of the suit property, which came to be decreed by judgment dated 12<sup>th</sup> December, 2019. As against the decree R.C.A. No. 04 of 2020 was instituted by the petitioners. By order dated 15<sup>th</sup> January, 2020 Appellate Court passed following order :

**ORDER**

- 1) The judgment and decree dated 12/12/2019 passed by the Civil Judge, Junior Division,

Basmathnagar in Regular Civil Suit No. 140/2010 is stayed.

- 2) The stay to remain in force till filing say by the respondents, on this application (Exhibit 5). However, it is clarified that if the respondents file their say before the adjourned date i. e. after taking the application on board, the order shall stand extended automatically, till the adjourned date.
  - 3) The Court and Collector executing the decree in Regular Civil Suit No. 140/2010 are directed to complete the entire procedure for effecting partition as per shares determined by the decree, except delivery of possession.
  - 4) The show cause notice be issued to the respondents as to why stay granted should not be confirmed till final decision of this appeal, as prayed by the appellant.
  - 5) The notice returnable on 17/02/2020.
3. Subsequently, order below Exhibit 05 came to be rejected by the impugned order.
4. Present petition can be disposed of in view of the consensus between the parties that as appeal is fixed for final hearing before the Appellate Court, the execution to the extent of delivery of possession can be stayed as passed by the order of 15<sup>th</sup> January, 2020.
5. In view of the above, there is no necessity for this Court to

examine validity of the order dated 19<sup>th</sup> July, 2022.

6. Learned counsel for the parties submit that they will cooperate with the Appellate Court and the appeal will be argued. The submissions of the learned counsel are made on instructions of the parties and same are accepted as an undertaking to this Court.

7. In view of the above writ petition stands disposed of. No costs.

**[SHARMILA U. DESHMUKH, J.]**

*bsb/Feb. 23*