

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

WRIT PETITION NO. 14668 OF 2019

Sudhakar Sadashivrao Mane .. Petitioner

Versus

Madhukar Sadashiv Mane and others .. Respondents

Shri Mahendra B. Kolpe, Advocate for the Petitioner.
Shri V. B. Deshmukh, Advocate for the Respondent No. 1.
Shri S. A. Wakure, Advocate for Respondent Nos. 6A to 6B.

**CORAM : SHARMILA U. DESHMUKH, J.
DATE : 05TH JANUARY, 2023.**

FINAL ORDER :

- . Heard the learned counsel appearing for parties.
2. The petitioner is aggrieved by the order dated 06th April, 2018 passed by the Adhoc District Judge - 2, Osmanabad in Misc. Civil Appeal No. 132 of 2017, wherein the challenge was to the order passed in R. D. No. 28 of 2015 sending the preliminary decree to the Collector for effecting partition of the suit property. By the impugned order inspite of objection been taken to the maintainability of the appeal, the District Judge has stayed the order passed in R. D. No. 28 of 2015.
3. The learned counsel for the petitioner submits that as the appeal itself was not maintainable in view of Order XXXXI of the Code of Civil Procedure, no stay order could have been passed.

4. The learned counsel for the respondents submits that the appeal is fixed for hearing tomorrow before the District Judge and the submissions raised by the petitioner can be raised before the District Judge.

5. Considering the fact that matter is listed for hearing of appeal before the District Judge, I am not inclined to interfere with the order at this stage. The District Judge shall hear the appeal on maintainability and decide the same on its own merits, in accordance with law and expeditiously and preferably within a period of four (04) weeks from today. The writ petition is accordingly disposed of.

[SHARMILA U. DESHMUKH, J.]

bsb/Jan. 23