

VRJ

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.6821 OF 2023

VAIBHAV
RAMESH
JADHAV

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Mahadev Laxman Bhosale Bhintade
Deceased Through Legal Heir Kisan
Alias Krishnat Mahadev Bhosale Alias
Bhintade ... Petitioner

V/s.

Vithhal Narayan Bhosale Alias Bhintade
Deceased Through Legal Heirs & Ors. ... Respondents

Mr. Nikhil Wadikar with Mr. Niranjana Kandade i/by
Nandu Pawar for the petitioner.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 9, 2023

P.C.:

1. The petitioner-original defendant in Regular Civil Suit No.276 of 1989 is challenging order passed by the Appellate Court rejecting application for stay during pendency of application for condonation of delay in filing appeal challenging decree in suit for partition.
2. The Trial Court decreed the suit on 6th December 1995. The petitioner filed appeal on 22nd December 2020. There is delay of 25 years in filing the appeal.
3. According to learned advocate for the petitioner, right to file appeal being substantive right, and considering nature of decree

for possession, the petitioner is entitled to interim relief in the form of stay to the decree for possession.

4. Ordinarily, the Court considering challenge to the decree for possession needs to protect rights of the defendant who is suffering decree for possession. However, the said principle applies to those litigants who approached the Court within reasonable period. If there is appeal instituted within reasonable period, the Court needs to protect such litigants. However, in the facts of the case, there is delay of 25 years in filing the appeal. The decree holder is waiting for fruits of decree for last 25 years. Therefore, there is no justification to prolong the agony of decree holder of not getting fruits of the decree even after 25 years by granting interim relief. Therefore, in my opinion, the Appellate Court was fully justified in rejecting application for stay during pendency of condonation of delay application. There is no merit in the writ petition.

5. The writ petition is dismissed. No costs.

(AMIT BORKAR, J.)