

SA Pathan

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

WRIT PETITION NO.6390 OF 2022

Dnyanu Maruti Kate

... Petitioner

V/s.

Subhash Mahadeo Kate & Ors

... Respondents

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AYUB
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Ms. Manisha Devkar a/w. Mr. Shankar Katkar, for
petitioner.

Mr. Dilip Shinde a/w Mr. Mohan C. Kumbhar & Mr.
Harshwardhan K., for respondent Nos.1 & 5.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 11, 2023

P.C.:

1. By the impugned order, the Trial Court rejected the application purportedly under Order 21, Rule 26 of the Code of Civil Procedure, 1908 seeking stay of decree for partition passed in Regular Civil Suit No.93 of 2000 dated 28 June 2001.

2. According to the petitioner, he is defendant No.6 in Regular Civil Suit No.93 of 2000. Though, the decree was passed on 28 June 2001, he got knowledge about the proceedings only in December 2021 and, therefore, he filed application under Order 9, Rule 7 and 13 of the Code of Civil Procedure, 1908.

3. In the said application, the petitioner applied for stay of decree dated 28 January 2001.
4. The Trial Court rejected the application holding that the petitioner has failed to make out a prima facie case. The Court recorded prima facie finding that the petitioner was served that the suit summons in the year 2000. Therefore, it was obligatory on the petitioner to furnish sufficient cause to get relief of stay.
5. On perusal of report of Bailiff dated 22 March 2000, prima facie, it appears that service effected on petitioner (defendant No.6) is in accordance with Order 5, Rule 15 of the Code of Civil Procedure, 1908. The petitioner has not explained either the delay or sufficient cause for not appearing in the suit; therefore, on the basis of prima facie finding, the Trial Court rejected the application for stay of decree.
6. Learned Advocate for the petitioner submitted that Gat No.288 is self acquired property of the petitioner, if the decree is not stayed, he will lose possession of the suit property which is the only source of income for the petitioner.
7. In absence of prima facie case, the Trial Court in an application filed after 20 years was justified in rejecting the application. However, in case, the petitioner lose possession of the property ultimately the petitioner succeeds in the litigation, the petitioner will have remedy under Section 144 of the Code of Civil Procedure, 1908. Therefore, at this stage there is not need to interfere with the order passed by the Trial Court.

8. Considering the facts of the case, Civil Miscellaneous Application No.3 of 2022 is expedited.

9. The writ petition is, therefore, dismissed. No costs.

(AMIT BORKAR, J.)