

SA Pathan

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

WRIT PETITION NO.50 OF 2020

Manisha Raju Mhaske ... Petitioner
V/s.
Atmaram Kisan Mhaske & Ors. ... Respondents

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Mr. Ravindra S Pachundkar, for the Petitioner.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 29, 2023

P.C.:

1. The petitioner who is original defendant challenging order passed by the Appellate Court rejecting application for stay under Order 41, Rule 5 of the Code of Civil Procedure, 1908 (for short 'CPC') in appeal challenging decree for possession.
2. The appeal under Section 96 of CPC against decree for possession involves adjudication on the fact of law. Therefore, it was necessary for the Appellate Court to protect possession of the petitioner during pendency of statutory appeal.
3. Respondent is duly served. Despite service, none appears for respondent. I, therefore, pass following order:
 - a) The application below Exhibit 5 in Regular Civil Appeal No.229 of 2019 is allowed.

4. The writ petition stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)