



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

907 WRIT PETITION NO. 15294 OF 2023

**Tulshiram Govind Bhujal Died Through Lrs Jayprakash Tulshiram Bhujal
And Another**

....Petitioner

VERSUS

**Baburao Nathu Bhujal Died Through Lrs Kishor Baburao Bhujal Died Lrs
Chhya Kishor Bhujal And Others**

.....Respondent

.....
Advocate for the Petitioner : Mr. Pokale Dnyaneshwar Bhaurao

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CORAM : ARUN R. PEDNEKER, J.

Dated : February 13, 2024

PER COURT :-

1. Heard the learned counsel for the petitioner.
2. By way of present writ petition, the petitioners are challenging the order below Exh. 1 in R.D. No. 21/2003 passed by the Civil Judge, Junior Division, Pachora, District Jalgaon. By way of the impugned order precept is issued under section 54 of the CPC to Collector Jalgaon for delivery of possession of suit property bearing Gat No. 155, area 80 R. out of 4 H. 64 R. situated at village Nipani, Tq. Pachora.
3. In the instant case, the respondents (original plaintiffs)/decree holder have filed R.C.S. No. 208/1984. The same is decided in favour of plaintiff/decree holder and defendants/petitioners herein are directed to hand over the possession of the suit property. The decree was challenged in appeal. The appeal was also dismissed. Thereafter, the petitioner filed the second appeal with an application for condonation of delay. In the application for condonation of delay, this Court passed the order dated 29th April, 2014, which is as under -

"1. The application is filed for stay of the execution of a decree given against the applicant. He has also filed application for delay condonation caused in filing Second Appeal. This Court has gone through the

judgment delivered by the Trial Court and the First Appellate Court.

2. The area involved is 80 R. 7/12 extract is produced and it shows that crops like Jawar etc. are taken and suit was filed in the year 2003 and we are in 2014 and the appellant is in possession for these years. There was question of mesne profits also. In view of Order 41, Rule 5 of C.P.C. no blanket stay can be granted.

3. So, the applicant is to deposit Rs. 1,00,000/- (Rupees one lakh) by way of security on or before 9.6.2014. If the amount is deposited the stay shall continue till the next date. If the amount is not deposited the stay shall stand vacated automatically. Stand over to 17.6.2014."

4. I am informed by the learned counsel for the petitioner that the applicant/petitioner herein was directed to deposit Rs.1,00,000/- by way of security on or before 9.6.2014 and no further time was granted by this Court. No amount was deposited by the applicant/petitioner. In view of the same, the interim order passed by this Court on 29.4.2014 stood automatically vacated and there is no interim order in favour of the petitioner. Thus, the decree is sought to be executed in absence of any interim order.

5. In view of the above, I see no error in the impugned order passed by the Executing Court. However, the impugned order shall be subject to any further order that may be passed in the second appeal which is pending before this Court. In absence of any interim order in the second appeal, the impugned order cannot be interfered with.

6. The writ petition is dismissed with above observation.

(ARUN R. PEDNEKER, J.)