

Shabnoor

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

WRIT PETITION NO.1702 OF 2023

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Sharad Vitthal Barle & Anr.

... Petitioners

V/s.

Anil Gorakh Nale & Ors.

... Respondents

Mr. Dinesh Bhosale, for Petitioners.

CORAM : AMIT BORKAR, J.

DATED : JULY 10, 2024

P.C.:

1. The petitioners are the judgment debtors suffering decree for possession in a suit filed by the respondents for removal of encroachment.
2. According to the petitioners, they have filed substantive appeal along with application for condonation of delay; however, the Appellate Court has not considered their application for stay of decree. Therefore, they applied before the Executing Court for stay of executing proceeding. The Executing Court by the impugned order has rejected the application.
3. Merely because of an appeal against the decree is pending before the Appellate Court, pendency of such appeal by itself is not sufficient to confer power on the Executing Court to stay the decree for possession. Hence, I find no error in the approach

adopted by the Executing Court rejecting petitioners application for stay of decree. Therefore, the writ petition stands dismissed.

4. It shall be open for the petitioners to apply before the Appellate Court for appropriate relief in respect of execution of decree.

(AMIT BORKAR, J.)