

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.13623 OF 2024

Ms Sumita Vittal Bhatkar and Anr.

...Petitioners

V/s.

Rajendra Chandrakant Dhuru and
Ors.

...Respondents

Mr. Kishor Patil *i/b. Mr. Pratik B. Rahade for the Petitioners.*

Mr. Rajendra C. Dhuru *with Mr. Baliram Kanvale with Mr. Rohit Patil for Respondent Nos.1 to 5.*

CORAM : SANDEEP V. MARNE, J.

Dated : 8 October 2024.

P.C.:

1) The Petition challenges order dated 4 September 2024 passed by the Executing Court directing execution of warrant of possession. Petitioners' grievance is that ex-parte decree has been secured against them by keeping them under misrepresentation that the disputes were being settled. It appears that the Petitioners have already filed application for setting aside ex-parte order under the provisions of Order IX Rule 13 of the Code of Civil Procedure, 1908(**the Code**) and M.A.R.J.I. Application No.175 of 2017 is filed for seeking condonation of delay in filing the said application. Thus, the application for setting aside ex-parte decree is pending for the last 7

long years. It appears that the Petitioners have not been able to secure any interim orders in the said application in respect of ex-parte decree.

1. In that view of the matter, execution Court is right in executing the warrant of possession. If the Petitioners succeed in the application for setting aside ex-parte decree, they would be at liberty to apply to the Court for restitution of the possession. Execution of the decree cannot be kept pending indefinitely till the Petitioners get their application for setting aside ex-parte decree decided. In that view of the matter, no error can be traced in the interim order dated 4 September 2024. Leaving open the liberty to the Petitioners to apply for restitution of possession in the event they succeed in application under Order IX Rule 13 of the Code, Writ Petition is disposed of.

[SANDEEP V. MARNE, J.]