

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

WRIT PETITION NO. 14432 OF 2024

Motilal Mohanlal Dedhia

}**Petitioner**

: Versus :

Mahendra Dhondu Gaikwad,
Legal Heir of late Shri. Dhondu
Ganbu Gaikwad

}....**Respondent**
(Orig.Plaintiff)

Mr. Surel Shah, Senior Advocate a/w. Mr. Piyush M. Shah, D. Shah and H. Sagar i/by. Mr. Devendra M. Udani, for the Petitioner.

Mr. Ranjit D. Shinde, for the Respondent.

CORAM : SANDEEP V. MARNE, J.

Dated : 16 October 2024.

P.C. :

1) The petition is filed challenging the order dated 18 September 2024 by which the Trial Court has rejected Petitioner's application for stalling the execution proceedings. It appears that the Plaintiff has taken out execution proceedings for execution of ex-parte decree dated 20 December 2021 passed in Regular Civil Suit No. 375/2020. Petitioner-Defendant has already filed application for setting aside *ex-parte* decree under the provisions of Order 9 Rule 13 of

the Civil Procedure Code (**Code**). It is Petitioner's grievance that during pendency of the said application, the decree is sought to be executed.

2) It appears that the decree has been executed and possession of the suit premises is handed over to the Plaintiff today. In that view of the matter, nothing would survive in the present petition.

3) Mr. Shah, the learned Senior Advocate appearing for the Petitioner would however request that the Plaintiff be directed to maintain *status-quo* in respect of the suit premises after taking over its possession. The second request made by him is for expediting hearing of the application for setting aside the *ex-parte* decree.

4) The Writ Petition is accordingly **disposed of as infructuous**. However, the Trial Court is requested to expedite the hearing of the application for setting aside the *ex-parte* decree filed under the provisions of Order 9 Rule 13 of the Code.

5) Till decision of the said application, the Plaintiff shall not create any third party rights in respect of the suit premises.

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[SANDEEP V. MARNE, J.]