

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

**Writ Petition No. 14705 of 2024**

Smt. Sunandabai Patilbuwa Rakshe ... Petitioners.

V/s.

Shri Maruti Yashwant Rakshe ... Respondents.

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| Mr. Surel Shah, Senior Counsel<br>a/w. Vikas Shivarkar a/w. Mr. J.D.<br>Khairnar | Advocate for the Petitioner |
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**CORAM : S.M. MODAK, J**

**DATE : 23 October 2024.**

**P.C. :**

Heard learned Senior Advocate Shri Shah for the Petitioner/judgment debtor. There is a decree passed against the present petitioner on 16 December 2003 in Regular Civil Suit No.50/1999. Till the time Misc. Civil Application No.50/2023 was filed before the District Court, Pune for condonation of delay of more than 19 years, no legal steps were taken for challenging the said judgment.

2. At the same time, even though there is a decree of permanent injunction in favour of the respondents, no steps were taken to execute the decree till the time Regular Darkhast 6/20 was filed before the Vadgaon Maval Court. The application is at page -109.

This execution was filed on the basis of attempt made by the judgment debtor with the help of her three sons to obstruct the possession. That took place 8 days prior to filing of Darkhast. There is also an application for sending judgment debtor to civil imprisonment.

3. On this background, the present petitioner applied for stay to the execution of decree. It was rejected by Court of District Judge Pune on 24 July 2024 (Page-140). It was rejected predominantly for the reason if stay is granted then appellant can take disadvantage. The said order is challenged by way of this writ petition.

4. The learned Senior Advocate Shri Shah tried to explain the background of the litigation. He contended following two facts:-

- (i) There is also a suit bearing No. 209/1993 filed by the husband of the defendant and mother-in-law of the defendant against the present decree-holder. The said suit is for possession (i.e. referred in Paragraph No.11 of the final judgment).
- (ii) The trial Court while decreeing the suit for permanent injunction has considered this fact.

5. The brother-in-law of the judgment debtor was murdered by the decree holder. He was convicted but later on he was acquitted.

6. The prayer is for staying the proceedings of execution. It is true that decree for permanent injunction can be executed when there are attempts to obstruct the possession. That is a cause of action for filing execution application. It is a debatable issue whether incidents pleaded in execution application about obstruction has really taken place or not and there was a Covid period. It is very much true that the Executing Court is supposed to enquire about alleged acts of obstructing the possession of the decree-holder. It is no doubt true if those acts are proved, one of the mode of execution is to send the judgment debtor to civil imprisonment. Admittedly, she has challenged the judgment and it is pending for consideration of the delay condonation application. The interest of the decree-holder can be protected by asking the judgment debtor to give an undertaking that she will not make an attempt to disturb the possession otherwise then in due process of law.

7. With these directions, there can be stay and writ petition can be disposed of. Hence, the order:-

### **ORDER**

- (i) The order dated 24 July 2024 passed by the Court of District Judge, Vadgaon, Dist.Maval in Civil Misc. Application No.50/2023 is set aside.
- (ii) Stay is granted to the proceedings to the Regular Darkshast No.6/20 till disposal of Civil Misc. Application.

- (iii) The stay is granted subject to furnishing undertaking by judgment debtor not to indulge into an act otherwise than due process of law so as to obstruct the possession of the decree-holder.
- (iv) The undertaking be filed within three weeks before the Executing Court. This undertaking is considered as without prejudice to her rights to argue the civil appeal.
- (v) The hearing of the Civil Misc. Application is expedited.
- (vi) The Writ Petition stands disposed of.

(S.M. MODAK, J.)