



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.6361 OF 2023

Vijay S/o Nagorao Rane .Vs. Najukrao Kashiram Ghatol and another

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri S.H. Kshirsagar, Advocate for petitioner.

Shri V.B. Bhise, Advocate for respondent No.1.

CORAM : ANIL S. KILOR, J.

DATED : 18/01/2024

1. Heard.
2. This writ petition takes exception to the order below Exh.16 dated 17.04.2023 passed by the District Judge-1, Akot, in Regular Civil Appeal No.11 of 2022 granting stay to the execution proceeding namely Regular Darkhast No.2 of 2022.
3. The only ground raised is that, on 15.04.2023 the application Exh.16, for grant of stay was moved and no copy of the same was served upon the petitioner, who is the respondents in the said appeal. It is submitted that, the learned first appellate Court on 17.04.2023 without giving an opportunity to file reply to the application on receiving the copy of application and without giving an opportunity of being heard, finally decided the application and allowed the same.

4. After going through the record, it is evident that, the copy of application Exh.16 was served on the petitioner on 21.04.2023 i.e. after the impugned order was passed on 17.04.2023. It is thus, evident that, the petitioner could not get an opportunity to submit his say to the said application and opposed it.

5. In the circumstances, to meet the ends of justice, I am of the opinion that, the purpose would be served if the learned first appellate Court is directed to decide the application afresh after hearing the petitioner. Accordingly, I pass the following order :

(i) The writ petition is **partly allowed**.

(ii) The order below Exh.16 dated 17.04.2023 passed by the District Judge-1, Akot in Regular Civil Appeal No.11 of 2022, is hereby quashed and set aside.

6. The learned District Judge-1, Akot, is directed to decide the application Exh.16 afresh after hearing both the parties within **one month** from the next fixed date and till then, the parties are directed to maintain status quo.

7. The learned trial Court is directed to expedite the appeal.

Writ Petition is **disposed of** accordingly. No order as to costs.

JUDGE