



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

CIVIL APPLICATION (CAS) NO.870 OF 2024 IN
SECOND APPEAL NO.263 OF 2024

Kailas Kashiram Raut and others .Vs. Pradip Dnyaneshwar Aasutkar and others

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

Court's or Judge's Order

Shri A.M. Chandekar, Advocate for appellants.

Mrs. R.S. Sirpurkar, Advocate for respondent Nos.1 to 4.

CORAM : SANJAY A. DESHMUKH, J.
DATED : 10/10/2024

1. This is an application for granting stay to the execution proceeding No.58 of 2017 arising out of judgment and decree passed in Regular Civil Suit No.223 of 2008 till the decision of this appeal pending in the Court of Civil Judge, Junior Division, Chandrapur.

2. Perused the application.

3. Heard learned advocates for both sides.

4. The learned advocates for the appellants submitted that, the respondents/decreed holder has admitted the possession of the plaintiff in the disputed property in the reply. It is submitted that, the objection of the appellants who are in possession of the suit property are not adjudicated as contemplated by Order 21 Rule 101 of the Code of Civil Procedure (for short, "CPC"). He, therefore, submitted to grant stay to the execution proceedings in question.

5. The learned advocate for the respondents strongly objected the application and submitted that, the application of the appellants is not maintainable as per Rule 97 of Order 21 of the CPC. She pointed out that only the decree holder or purchaser of such property has right to file application against the person who obstructs decree in obtaining possession of the property under decree and other have no right to file such application. She further pointed out that, appellants have not pleaded their capacity under which they are having their possession in the suit property.

6. The learned advocate for the respondents further submitted that, Rule 99 of Order 21 of the CPC does not prescribe framing of issue and leading of the evidence for adjudication. The learned advocate for the respondents further submitted that, the authority of *Brahmdeo Choudhary ..vs.. Rishikesh Prasad jaiswal and another*, reported in 1997 AIR (SC) 856 does not stand for the case as contended by the appellants. She pointed out that, it is distinguishable on the point of possession and remedy.

7. Both the parties have concluded their arguments on the point of admission of appeal and forming substantial question of law. The Court has to decide it on merit.

8. Considering the period required for the decision, it would be proper to stay said execution proceedings in question till 25.10.2024. Appellants to inform this order to the Executing Court.

9. Stand over **25.10.2024**.

(SANJAY A. DESHMUKH, J.)