



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 3123 OF 2024

Gurunath Bhagwan Kawale
VERSUS
Kadubai Manikrao Dhavare And Anr

Mr. M. S. Kulkarni, Advocate for Petitioner.

CORAM : R. M. JOSHI, J.
DATE : 07th March, 2025

PER COURT :-

1. Respondents are absent though duly served.
2. Learned counsel for Petitioner submits that even before Execution Court, one of the respondent was required to be served by paper publication. Thus, according to him, indicates that respondents have no inclination to oppose the petition.
3. This petition takes exception to the order passed below Exhibit 25 in Special Darkhast No. 151/2017 whereby the application filed by decree holder for seeking possession, warrant against the judgment debtor came to be rejected on the ground that the Second Appeal is pending though admittedly no order of stay is passed.
4. Learned counsel for the petitioner submits that fact of there being no stay to the decree is brought to the notice of the Execution

Court but in spite of the same, application is rejected simply on the ground that Second Appeal is pending.

5. The Execution Court has committed error in refusing to execute decree when admittedly there is no stay to the decree sought to be executed before it by any Competent Court.

6. Having regard to such circumstances, order passed by the Court may not assist. Order below Exhibit 25 is set aside. Execution Court is directed to pass order below Exhibit 25 in accordance with law.

(R. M. JOSHI, J.)

bsj