



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

WRIT PETITION NO. 3557 OF 2025

**PRABHAWATI ARVIND KAKADE
VERSUS
BABU DHONDIBA CHAVAN AND ANOTHER**

...

Mr. Gunale Vishwamber Digamberrao, Advocate for the Petitioner
Mr. Sachin S. Panale, Advocate for Respondent No.1

**WITH
CIVIL APPLICATION NO. 3343 OF 2025
IN WP/3557/2025**

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**CORAM : S. G. CHAPALGAONKAR, J.
DATE : 24.07.2025**

PER COURT :-

1. The present writ petition takes exception to order dated 25.02.2025 passed by learned Ad-hoc District Judge, Udgir on application below Exhibit-10, in Regular Civil Appeal No.10 of 2024, by which prayer of petitioner to stay judgment and decree under Appeal has been declined.

2. Mr. Gunale, learned Advocate appearing for petitioner submits that respondent filed Regular Civil Suit No.09 of 2015, which was re-numbered as R.C.S. No. 93 of 2018 before learned Civil Judge Senior Division, Udgir. The said suit was decreed. Aggrieved by said decree, petitioner filed Regular Civil Appeal No.10 of 2024 before learned District Judge along with application below Exhibit-10 seeking

stay to execution of decree. The said application has been rejected vide impugned order dated 25.02.2025.

3. Mr. Gunale would submit that when substantive appeal against decree for possession has filed, it was necessary to maintain status-quo as regards to possession of suit property. However, learned Appellate Court rejected stay application merely on the ground that application is belatedly filed.

4. Mr. Panale, learned Advocate appearing for respondent-plaintiff supports impugned order. He submits that Appellate Court considered prima facie case and found that petitioner has encroached upon land of respondent and was liable to deliver possession in pursuance to decree.

5. Admittedly, the substantive appeal filed by petitioner against decree passed in Regular Civil Suit No.93 of 2018 is pending before learned District Judge. The decree is passed for possession of encroached area. The Appellate Court will have to re-appreciate entire evidence on record and pass final order in Appeal either by affirming or reversing Trial court's decree. Order XLI Rule 5 of Code of Civil Procedure enables Appellate Court to stay execution of decree pending Appeal, subject to certain conditions. It also stipulates that Appellate Court would see that stay application is diligently filed. In present case, it is discernible that when

decree was put to the execution and pursuance thereto petitioner was served with notice, application for grant of stay was moved. Therefore, technically application cannot be branded as belated one.

6. In light of Scheme of Order XLI Rule 5, normally decree under Appeal ought to have been stayed. Appellate Court instead of recording prima facie finding as to necessity to grant stay to decree, delve in details of judgment passed by learned Trial Court and rejected application for stay to decree on erroneous count. The Appellate Court apparently failed to exercise jurisdiction in tune with procedure of law. The reasons given for rejection of stay application cannot be countenanced.

7. In the facts and circumstances of the case, it would be appropriate if Appellate Court decides pending Appeal expeditiously. Hence, following order is passed:

::ORDER::

- a. Writ petition is allowed in terms of prayer clauses 'C' and 'D'.
- b. The Appellate Court shall endeavour to decide pending Appeal within a period of four (04) months from today.
- c. Parties to cooperate.
- d. Pending Civil applications, if any, stand disposed of.

[S. G. CHAPALGAONKAR, J.]