



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

WRIT PETITION NO. 4263 OF 2023

LIMBA DAGDADU SASANE

VERSUS

VITTHAL DASU PAUL

...

Mr. Patil Indrale Anand Vinayakrao, Advocate for the Petitioner

Mr. Rahul V. Patil, Advocate for Respondent

CORAM : S. G. CHAPALGAONKAR, J.

DATE : 18.07.2025

PER COURT :-

1. The present writ petition takes exception to order dated 13.03.2023 passed by learned Civil Judge Senior Division, Latur below Exhibit-14 in Regular Darkhast No.27 of 2021, thereby issuing possession warrant of suit property prescribed in Regular Civil Suit No.348 of 2014. The petitioner also impugns order dated 22.11.2022 passed by learned District Judge-5 at Latur below Exhibits-5 & 21 in Regular Civil Appeal No.20 of 2021 to the extent of directing petitioner to furnish security/surety to the tune of Rs.50,000/- within a period of one month from date of order.

2. Respondent herein filed suit for recovery of possession regarding suit house No.4360 situated at Murud Tq. & Dist. Latur. The Trial Court decreed suit, directing petitioner-defendant to deliver possession in favour of respondent-plaintiff. The decree passed by learned Trial Court is challenged in Regular Civil Appeal No.20 of 2021 before learned District Judge, Latur. Petitioner also filed application below

Exhibit-5 seeking stay to decree of possession passed by Trial Court. Learned District Judge partly allowed applications at Exhibit-5 & 21, thereby stayed execution of decree on condition that petitioner furnishes security/surety to the tune of Rs.50,000/- within one month from date of order, in default stay order would stand vacated. Meanwhile, Executing Court issued possession warrant in Regular Darkhast No.27 of 2021 vide order dated 13.03.2023.

3. Heard learned Advocates appearing for respective parties.

4. Apparently, decree for possession of suit house is passed in favour of respondent and same is subject matter of appeal before learned District Judge. Order XLI Rule 5 of Code of Civil Procedure empowers Appellate Court to stay execution of decree during pendency of appeal subject to imposition of sufficient cost. Sub-Clause (3) of Rule 5 of Order XLI mandates that stay to execution shall not be made unless substantial loss may result to party applying for stay and application is made without unreasonable delay, even it contemplates giving of security by applicant for due performance of such decree as may ultimately bind him. The scheme of Order XLI Rule 5 empowers Appellate Court to impose appropriate conditions in facts and circumstances of case.

5. Perusal of impugned order would show that petitioner is directed to furnish surety/security to the tune of Rs.50,000/- within a period of one month from date of order as precondition for stay of order under Appeal. However, by interim order dated 13.04.2023, this Court stayed proceeding in

Regular Darkhast No.27 of 2021. The said interim order subsists as on today. Mr. Anand Patil, learned Advocate for petitioner, on instructions, submits that Appellant/petitioner is ready to give cash surety of Rs. 25,000/- (Rs. Twenty Five Thousand only). In that view of the matter, writ petition can be disposed of in following terms.

6. Writ petition is **partly allowed**.
7. Impugned order dated 22.11.2022 passed below Exhibit 5 & 21 is modified.
8. The execution and implementation of judgment and decree passed by learned Trial Court in R.C.S. No.348 of 2014 and further proceeding in Regular Darkhast No.27 of 2021 is stayed till final disposal of Regular Civil Appeal No.20 of 2021 pending before learned District Judge-5 at Latur, subject to condition that petitioner deposits amount of Rs.25,000/- by way of security with Appellate Court subject to final order to be passed in appeal within a period of four (04) weeks from today.
9. Since Regular Civil Appeal No.20 of 2021 is pending since last four years, learned District Judge, Latur shall endeavour to decide Appeal finally within a period of six (06) months from today.
10. Parties to cooperate.

[S. G. CHAPALGAONKAR, J.]