



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

31 WRIT PETITION NO. 7116 OF 2025

CHANDU MARIBA HANVATE AND ANOTHER
VERSUS
BALAJI MOTIRAM IBITWAR AND OTHERS

...

Mr. Gangakhedkar Shailendra S, Advocate for the Petitioner
Mr. D. M. Shinde, Advocate for Respondent Nos.1 & 2

....

CORAM : S. G. CHAPALGAONKAR, J.

DATE : 16.06.2025

PER COURT :-

. The present writ petition takes exception to order dated 08.04.2025 passed by learned Ad-hoc District Judge-1, Bhokar below Exhibit-54 in Civil Miscellaneous Application No.26 of 2022, whereby prayer of petitioners seeking stay to execution of decree passed in Regular Civil Suit No.44 of 2013 has been rejected.

2. Petitioners are original defendant Nos.13 and 14 in Regular Civil Suit No.44 of 2013. Respondent Nos.1 to 4 instituted suit seeking decree of partition and separate possession in respect of suit properties and also prayed for cancellation of sale deed Nos. 355 of 1992, 467 of 1996, 469 of 1996, 470 of 1996 and 1383 of 2012 with further prayer to restrain defendant Nos.13 and 14 from dealing or creating third party interest over the suit properties.

3. The present petitioners/defendant Nos.13 and 14 failed

to appear in suit as such suit proceeded ex-parte against them and finally decree has been passed declaring impugned sale deeds as illegal and void in law. The judgment and decree dated 28.02.2022 passed in Regular Civil Suit No.44 of 2013 is now challenged by petitioners before District Judge at Bhokar. Since appeal is time barred, Civil Miscellaneous Application No.26 of 2022 is filed to condone delay. Similarly, an application was filed below Exhibit-54 to stay execution of decree passed in suit. Appellate Court rejected said application vide impugned order dated 08.04.2025.

4. A perusal of the reasons recorded in impugned order depicts that petitioners/defendants failed to avail opportunity to file written statement or contest suit, and when decree was put to the execution, filed appeal along with application for condonation of delay. Admittedly, Civil Misc. Application No.26 of 2022 is still pending consideration on the point of delay. Appellate Court, *prima facie*, observed that sale deeds on which petitioners are claiming rights are contrary to mandate of Hyderabad Tenancy Act.

5. In this background, this Court is not inclined to enter into merits of the matter at this stage. However, writ petition can be disposed of with direction to learned District Judge to decide Civil Misc. Application No.26 of 2022 as expeditiously as possible and in any case,

within a period of three months from date of this order.

6. Subject to decision on the point of delay, petitioners shall be at liberty to move afresh for stay of the judgment and decree passed by Trial Court, in case delay is condoned and substantive appeal is registered. However, till final disposal of Civil Misc. Application No.26 of 2022, parties to maintain status-quo as regards to suit properties.

7. With these directions, the writ petition stands disposed of.

[S. G. CHAPALGAONKAR, J.]

HRJadhav