



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.15978 OF 2024**

Mei Yung Sheish and Anr. ... Petitioners
versus
Ramesh Maruti Madge and Ors. ... Respondents

Mr. Pradeep Rajagopal with Ms. Drishti Shah i/by Rekha Rajagopal, for Petitioners.

Mr. Chaitanya B. Nikte with Mr. Ritvij A. Kale, Mr. Swapnil S. Sangle, Mr. Prajit S. Sahane, for Respondent Nos.2 and 3.

**CORAM: N.J.JAMADAR, J.
DATE : 15 JANUARY 2025**

P.C.

1. Heard the learned Counsel for the parties.
2. The Petitioners instituted Special Civil Suit No.914 of 2009 against Respondent Nos.4 to 6 for declaration and possession. By a judgment and decree dated 29 October 2018, the suit came to be decreed and Respondent Nos.4 to 6 / Defendant Nos.1 to 3 were directed to deliver vacant and peaceful possession of the suit premises to the Plaintiffs. The Petitioners put the said decree to execution by filing Special Darkhast No.214 of 2019.
3. Respondent Nos.1 to 3 preferred an Obstruction Application (Exhibit 21) in the said Special Darkhast No.214 of 2019 seeking a declaration that the decree passed in Special Civil Suit No.914 of 2009 was not binding on the obstructionists and that the decree was non-executable. By an order dated 30 November 2023, the executing Court rejected the Obstruction Application

(Exhibit 21).

4. Respondent Nos.1 to 3 – Obstructionists, preferred an application for condonation of delay in filing an appeal against the aforesaid order on Obstruction Application. In the said delay condonation application, Respondent Nos.1 to 3 filed an application to stay the execution of the decree passed in Special Civil Suit No.914 of 2009 and the further proceedings in Special Darkhast No.214 of 2019.

5. By the impugned order dated 22 April 2024, the learned District Judge, Pune, was persuaded to allow the application and stay the execution, operation and implementation of the decree passed in Special Civil Suit No.914 of 2009 and the proceedings in Special Darkhast No.214 of 2019, till the final hearing and disposal of the appeal.

6. Learned Counsel for the Petitioners submitted that the application for condonation of delay is yet to be heard finally. In the event, the delay is condoned, the appeal preferred by Respondent Nos.1 to 3 against the order on Obstruction Application, would be required to be determined on merits. Thus, it would be expedient that the said application for condonation of delay and appeal, if required, are decided by the District Court expeditiously.

7. Learned Counsel for Respondent Nos.2 and 3 submits that he is not averse to the aforesaid proposition.

8. Civil Suit was instituted by the Petitioners in the year 2009. It came to

be decreed on 29 October 2018. Respondent Nos.1 to 3 were not parties to the said suit and have filed obstruction proceedings. Since the decree was for the delivery of possession, the learned District Judge was persuaded to stay the execution and operation of the decree during the pendency of the appeal against an order passed under Order XXI Rule 97 of the Code of Civil Procedure. Prima facie, it appears that the obstructionists are claiming through the judgment debtors and do not claim any independent right. Therefore, having regard to the nature of the dispute and the controversy which may arise for determination before the learned District Judge, it may be expedient in the interest of justice that the application for condonation of delay and the appeal, if warranted, are decided expeditiously.

9. The Writ Petition, thus, stands disposed with a request to the learned District Judge, Pune, to decide the application for condonation of delay in preferring the appeal and the appeal, if required, as expeditiously as possible, and preferably within a period of four months from the date of communication of this order.

10. The contentions of all the parties are kept open for consideration.

11. By way of abundant caution, it is clarified that this Court has not entered into the merits of the matter and any of the observations hereinabove, may not be construed as an expression of opinion on the merits of the matter.

(N.J.JAMADAR, J.)