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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO. 3884 OF 2025
IN
FIRST APPEAL NO. 1647 OF 2025**

Usha Suryakant Prabhulkar & Anr. ...Applicants/Appellants
Versus
Sulakshana Sugandh Soparkar & Anr. ...Respondents

Mr. A. M. Kulkarni a/w Adv. Akil Kupade for the Applicants/Appellants
Mr. Pankaj J. Dixit for the Respondents.

CORAM : M. M. SATHAYE, J.

DATED : 13th AUGUST, 2025

P.C.:

1. Heard learned Counsel for the parties.
2. This is an application for interim stay to the impugned judgment and decree. The Applicants are original Defendant Nos. 1 and 2 in a suit filed for declaration of share and partition in respect of 3 properties viz. (i) Flat No. B-5-101 at Lalbag, Mumbai, (ii) landed property Survey/Gut No. 20, 118 and 87 alongwith dwelling house situated at Village – Bhui, Bawada, Tal.-Vaibhavwadi, District – Sindhudurg and (iii) a shop wherein business of goldsmith is being run situated on ground floor of building known as Anandi Ladha, near Maitri Car Mall, Lalbaug, Mumbai.
3. The impugned judgment and decree declares that Plaintiffs and

Defendants have certain shares in all properties. The impugned decree however directs that parties have right to enjoy the tenancy right over property no. 3, which is a goldsmith shop, however, it is also declared that the parties shall not have any right to partition the said property by metes and bounds.

4. Learned Counsel for the Applicants submits that since the Appeal is admitted and the impugned judgment and decree is likely to result in interference by Plaintiffs in the tenanted property and the possession of the flat which is occupied by Applicants, interim stay is necessary.

5. Learned Counsel for contesting Respondents/Original Plaintiffs submits that the goldsmith shop, which is a tenanted property, though cannot be partitioned by metes and bounds, the Applicants/Appellants are enjoying its possession, running a business therein and part of the tenanted premises are also sublet and they are earning out of it. He further submits that so far as landed property and dwelling house at Village – Bhui is concerned, the Applicants are not permitting entry.

6. Perused the impugned Judgment. Enquiry as to profits in respect of the flat and shop is already ordered.

7. Considering the fact that dispute is about partition between closely related parties (daughters in the family of one side and mother and son on

the other side), and further considering that the possession of the flat and shop as indicated above, is not in dispute, equities can be balanced by passing following order:

(I) The impugned judgment and decree is stayed during the pendency of the appeal, subject to following exceptions :

(a) The declaration of share and partition if sought, in respect of the property no. 2 i.e. landed property at Village-Bhui alongwith dwelling house can continue in accordance with law. It is not stayed.

(b) The Applicants shall not sell, alienate or create third party interest in respect of property No. 1, which is Flat No. B-5-101 during the pendency of the Appeal.

(c) The Respondent Nos. 1 and 2/Original Plaintiffs will be at liberty to file appropriate application seeking accounts/deposit of the earnings/profits out of the suit property no. 3 - the tenanted goldsmith shop, which if filed, will be decided in accordance with law on its own merits.

(II) The Interim Application is disposed of in above terms. All concerned to act on duly authenticated or digitally signed copy of this order.

(M. M. SATHAYE, J.)