



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 3725 OF 2025

Chatrapalsing Parasram Singh Chandel, Age 65 yrs,
Occ: Retired, R/o Post Mangalwari Peth, Umred,
Tq. Umred, Dist. Nagpur.

PETITIONER

VERSUS

Surendra (Nanabhau) Sharawan Gawli, Age 37 years,
Occ. Private Business, R/o Post Kawara Peth, Umred,
Tq. Umred, Dist. Nagpur.

RESPONDENT

Shri R.B. Dhore, counsel for the petitioner.
Shri A.G. Hunge, counsel for the respondent.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE : DECEMBER 10, 2025

ORAL JUDGMENT

RULE. Rule is made returnable forthwith and heard finally with consent of the learned counsel for the parties.

2. This petition takes exception to the order dated 17.06.2025 passed by the appellate Court thereby allowing the application for grant of stay subject to the condition of furnishing security for the amount of Rs.3,20,000/- by modifying the earlier order passed on the application at Exhibit 5 for grant of stay.

3. The petitioner is the original plaintiff in the suit for recovery of money which came to be decreed by the judgment and decree dated 26.07.2017. The respondent challenged the said judgment and decree *vide* Regular Civil Appeal no.206 of 2022 wherein he also filed an

application for grant of stay at Exhibit 5. By order dated 28.03.2025, the application at Exhibit 5 was allowed subject to the condition of depositing an amount of Rs.3,20,000/- within one month from the date of the said order. On 28.04.2025, the respondent-appellant in regular civil appeal submitted an application at Exhibit 20 for relaxation of the condition to deposit the amount of Rs.3,20,000/- and sought for permission to furnish security for the said amount. Although the application was opposed, the appellate Court passed order dated 17.06.2025 and allowed the application by modifying the order dated 28.03.2025 and granted stay subject to furnishing security for the amount of Rs.3,20,000/-, instead of depositing the said amount. This order is subjected to challenge by way of instant petition.

4. Shri R.B. Dhore, learned counsel for the petitioner submitted that the impugned order relaxing the condition imposed by the appellate Court is contrary to the earlier discretionary order passed by the Court while deciding the application at Exhibit 5 for grant of stay. He submitted that the impugned order modifying the condition is contrary to the purport of provisions of Order XLI Rule 1(3) of the Code of Civil Procedure, 1908 (for short, 'the Code'). He submitted that on failure of the appellant to fulfil the condition for grant of stay within the time, the appellant became disentitled to claim any discretionary order. The Court erred in relaxing the condition as the provisions of Rule XLI Rue 5(5) of the Code immediately got attracted.

In support of his submissions, the learned counsel for the petitioner placed reliance on the judgment of the Hon'ble Supreme Court in ***Kayamuddin Shamsuddin Khan Versus State Bank of India*** [(1998) 8 SCC 676] and the judgment of the Full Bench of the Calcutta High Court in ***Union of India Versus Amitava Paul*** [F.M.A. No.381 of 2004].

5. Per contra, Shri A.G. Hunge, learned counsel for the respondent vehemently opposed the petition and submitted that the appellate Court has rightly exercised discretionary powers and the impugned order is in tune with the provisions of Order XLI Rule 1(3) so also Order XLI Rule 5(5) of the Code. He submitted that the appellate Court has rightly exercised the discretion and there is no perversity with the impugned order. In support of his submissions, he relied upon the judgment of the Hon'ble Supreme Court in ***Sihor Nagar Palika Bureau Versus Bhabhlubhai Virabhai & Co.*** [(2005) 4 SCC 1].

6. While considering the controversy, it has to be seen that the impugned order is passed by the appellate Court by modifying earlier discretionary order by directing the petitioner to furnish security for an amount of Rs.3,20,000/-. It has to be seen that appellate Court is empowered to pass appropriate orders by exercising discretion under Order XLI Rule 1(3) of the Code. The position of law in this regard is dealt with by the Hon'ble Supreme Court in ***Sihor Nagar Palika Bureau*** (supra) in which while considering an identical fact situation with respect to Order XLI Rule 3 of the Code, the Hon'ble Supreme Court has upheld the order of modification of the condition as observed in paragraph 6 of the same which reads thus:-

“6. Order 41 Rule 1(3) CPC provides that in an appeal against a decree for payment of amount the appellant shall, within the time permitted by the appellate court, deposit the amount disputed in the appeal or furnish such security in respect thereof as the court may think fit. Under Order 41 Rule 5(5) a deposit or security, as abovesaid, is a condition precedent for an order by the appellate court staying the execution of the decree. A bare reading of the two provisions referred to hereinabove, shows a discretion having been conferred on the appellate court to direct either deposit of the amount disputed in the appeal or to permit such security in respect thereof being furnished as the appellate court may think fit. Needless to say that the discretion is to be exercised judicially and not arbitrarily depending on the facts and circumstances of a given case. Ordinarily, execution of a money decree is not stayed inasmuch as satisfaction of money decree does not amount to irreparable injury and in the event of the appeal being allowed, the remedy of restitution is always available to the successful party. Still the power is there, of course a discretionary power, and is meant to be exercised in appropriate cases.”

7. It has to be noted that the appellate Court has passed the impugned order by referring to the position of law as laid down in the above mentioned case. As the appellate Court is entitled to pass discretionary order to grant stay subject to certain conditions depending upon the facts and circumstances of the case, the condition to direct furnishing of security as imposed by the impugned order is within its powers and does not appear to be arbitrary. Having regard to this, I am of the opinion that the appellate Court has exercised the discretion judicially and in view of the position of law laid down by the Hon’ble Supreme Court, I do not find any perversity with the impugned order.

8. Having regard to the above mentioned factual and legal aspects no indulgence is warranted with the impugned order under Article 227 of the Constitution of India. The writ petition deserves to be dismissed and the same is dismissed with no order as to costs. Rule stands discharged.

(PRAFULLA S. KHUBALKAR, J.)

APTE