IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9757 OF 2023

Kalyan Gaibu Deshmukh and another .. Petitioners

Versus

Rajendra Shivaji Deshmukh and others .. Respondents

Shri Sujit A. Patil, Advocate for the Petitioners.
Ms. Harsha R. Lomte, Advocate h/f Shri Yashwant P. Jadhav, Advocate for the Respondent Nos. 1 to 3.

CORAM : AJIT B. KADETHANKAR, J.
DATE : 06TH OCTOBER, 2026.

ORDER :

. Petitioners filed R.C.S. No. 677 of 2017 against the respondents – defendants seeking a decree of perpetual injunction in the Court of learned 03rd Joint Civil Judge Senior Division, Dharashiv. After assessing the evidence and having heard the parties, the learned Trial Court pleased to decree the suit vide judgment and decree dated 26.08.2022. The respondents – defendants challenged the judgment and decree passed by the Trial Court before the District Court, Dharashiv vide R.C.A. No. 82 of 2022.

2. In an application seeking stay to the execution and operation of the judgment and decree under challenge, the First Appellate Court suspended the judgment and decree till disposal

of the appeal. This was done by order dated 31.10.2022, which is impugned in the present writ petition.

3. Mr. Patil, learned advocate for the petitioners submits that the order passed by the First Appellate Court is apparently cryptic one. He would submit that in fact, there could be no stay to an injunction, however, the First Appellate Court without applying the principles of law suspended the judgment and decree passed by the Trial Court. He submits that in the mean time the first appellate court heard the parties and it was to pronounce the judgment and order in appeal. However, due to transfer of the Judicial Officer, now the matter will have to be reheard by the newly constituted Court. Thus, it would be just and proper to continue interim relief granted by this Court on 07.08.2023 and dispose of the writ petition thereby giving time frame to the First Appellate Court to dispose of the first appeal.

4. Madam Harsha Lomte, learned advocate for the respondents instructed by Shri Yashwant Jadhav, learned advocate would however strongly support the order passed by the first appellate Court. She would submit that said order cannot be said to be cryptic one. Madam Lomte further submits that the respondents herein are always ready to argue the matter on merits before the first appellate Court. However, she submits that the petitioners are taking undue advantage of the interim relief granted by this Court. Thus, she submits that regular civil appeal itself is ready for hearing. There is no need to go into

merits of the writ petition and same may be disposed of.

5. After having heard the parties at length, the order impugned in the writ petition is stayed by this Court vide order dated 07th August, 2023. Since thereafter till this date the said order is neither recalled, nor modified. On the other hand on 17.03.2025, this Court observed that there is no stay granted to the proceedings pending before the First Appellate Court.

6. In view of the arguments advanced by Shri Patil, learned advocate for the petitioners, which are not countered by the learned advocate for the respondents that the matter is ready for hearing before the First Appellate Court, I deem it appropriate to dispose of this writ petition requesting the First Appellate Court to conclude the hearing of the regular civil appeal within a time frame manner. Considering the fact that interim relief is in operation since 07.08.2023, I deem it appropriate to continue the said interim relief till the disposal of R.C.A. No. 82 of 2022. Hence I pass following order.

O R D E R

A. The writ petition stands disposed of with a request to the First Appellate Court to conclude the hearing of the R.C.A. No. 82 of 2022 within a period of three (03) months from today.

B. Both the sides candidly agree that they shall not

unnecessarily seek adjournment in the matter.

C. Till the disposal of R.C.A. No. 82 of 2022, impugned order dated 31.10.2022 shall stand stayed.

D. All contentions of the parties are kept open.

[AJIT B. KADETHANKAR, J.]

bsb/Oct. 26