



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 15217 OF 2025

VASANT NARSOBA KAMBLE

VERSUS

ANAND ASHOK GANDHI THROUGH POA RAHUL PRADEEP
GANDHI

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Mr. P. V. Mandlik, Senior Advocate i/by Mr. Pratap Pravin
Mandlik, Advocate for the Petitioner.

Mr. Prasad Joshi h/f Mr. M. A. Shahane, Advocate for Respondent.

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**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 18th MARCH, 2026.**

P.C.:-

1. The present Writ Petition takes exception to order dated 08.08.2025 passed below Exhibit-14 by Civil Judge Junior Division, Tuljapur in Regular Civil Suit No.223/2024.

2. The petitioner/original defendant in Regular Civil Suit No.223/2024 pending before Civil Judge Junior Division, Tuljapur filed application below Exhibit-14 under Section 10 of Code of Civil Procedure seeking stay to proceeding in suit on ground that issue in suit is directly and substantially subject matter of Second Appeal No.128/2023. The learned Trial Judge rejected said application observing that Section 10 would have no application at the stage of deciding application for interim injunction and the prayer for stay of suit can be germen when trial would began.

3. Mr. Mandlik, learned Senior Advocate appearing for petitioner submits that Trial Court could not have outright rejected

application Exhibit-14 without considering merits of contention as raised in application.

4. Mr. Joshi, learned Advocate appearing for respondent justifies impugned order. He would submit that as can be discerned from language of Section 10 of Code of Civil Procedure, application for stay of suit can be entertained only when trial in suit is began and not while temporary injunction is being considered before framing of issues in suit.

5. Having considered submissions advanced by learned Advocates appearing for respective parties and after going through record tendered into service before this Court, it can be observed that petitioner has filed application under Section 10 of Code of Civil Procedure specifically contending that issue involved in present suit is directly and substantially involved in previously instituted suit, which is now subject matter of Second Appeal. The impugned order nowhere considers aforesaid contention. It merely observes that since trial has not commenced, application for stay of suit need not be decided and that application for interim injunction can be considered without impeded by stay application.

6. The language of Section 10 of the Code of Civil Procedure does not stipulate stage at which an application for stay of suit can be made. The only test to be applied is whether matter in issue in

subsequent suit is directly and substantially in issue in a previously instituted suit. It is open to Court to defer hearing of an application for stay till framing of issues or commencement of trial. However, merely because trial has not yet commenced, application could not have been rejected outright. In that view of matter, this Court finds that Trial Court has committed error of jurisdiction while rejecting application Exhibit-14. Hence, following order:

ORDER

- a. Writ Petition is allowed.
- b. The impugned order 08.08.2025 passed below Exhibit-14 by Civil Judge Junior Division, Tuljapur in Regular Civil Suit No.223/2024 is quashed and set aside.
- c. The application Exhibit-14 is restored to file of suit and matter is relegated back to Trial Court for reconsideration in accordance with law at appropriate stage.
- d. It is made clear that, pendency of application Exhibit-14 for stay shall not be an impediment for Trial Court to decide application for interim injunction, if any, filed by parties on its own merits.

(S. G. CHAPALGAONKAR)
JUDGE