IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.7562 OF 2026
IN
FIRST APPEAL NO.26 OF 2020

Sheshmal Ratnaji Solanki (Deceased)
through LRs.
Leribai Sheshmal Solanki (Deceased) & Ors. .... Applicants

versus

Deepchand Dharmchand Jain .... Respondent

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- Mr. Vaibhav Ugale a/w Mr. Mohan Waghmare, Advocate for Applicants and the Original Advocate for Appellants.
- Mr. Girish R. Agrawal a/w Mr. Shubham Jangam, Advocate for Respondent.

CORAM : SARANG V. KOTWAL &
RANJITSINHA RAJA BHONSALE, JJ.
DATE : 06th OCTOBER, 2026

P.C. :

1. This application is filed for seeking two reliefs. The first prayer is for extending the time to file paperbook and the other prayer is for extending the stay which according to the Applicant was granted pursuant to the order dated 28/07/2022 on the basis of the statement made by the learned counsel for the Respondent i.e. the original Plaintiff.

MANUSHREE NESARIKAR

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2. Heard Mr. Vaibhav Ugale, learned Counsel for the Applicants and Mr. Girish R. Agrawal, learned counsel for the Respondent.

3. Learned counsel for the Applicants (the Appellants and the original Defendant) invited our attention to the order dated 28/07/2022 passed by Division Bench of this Court while admitting the Appeal. He submitted that the Division Bench had granted time till 30/08/2022 to file the complete paperbook. However, the earlier Advocate did not take steps and the order could not be complied with within that time. He submitted that on 18/02/2026, the earlier Advocate on record passed away and therefore the learned counsel Mr. Vaibhav Ugale was approached and he is pursuing the Appeal as well as the present Application. He submitted that the situation arose because the earlier Advocate did not take any steps. For that, the Applicant must not suffer.

4. Learned counsel for the original Plaintiff/Respondent

submitted that the Applicant is taking advantage of his own wrong. He has not diligently filed the paperbook as was directed. The concession was given to him on the expectation that the paperbook was to be filed within the time frame mentioned in the said order dated 28/07/2022. Mr. Agrawal learned counsel for the original Plaintiff/Respondent submitted that the Applicant has been regularly appearing in the Execution Proceeding since 2022. Mr. Agrawal relied on the observations of the Hon'ble Supreme Court in the case of ***Lifestyle Equities C.V. and Anr. Vs. Amazon Technologies Inc.*** as reported in ***AIR Online 2025 SC 1088***.

5. We have considered these submissions. The Hon'ble Supreme Court in the above case has laid down guidelines in paragraph No.134, which are as follows :

> "134. We summarize our final conclusion on the grant of benefit of stay of execution of a decree by an appellate court in term of Order XLI as under: -
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> (1) Order XLI Rule 5 contains the provision for the grant

or refusal of stay of execution of the decree by the appellate court under the CPC. It categorically stipulates that mere filing of an appeal against an order of execution, shall not ipso facto operate as stay of proceedings. Any execution proceeding or an order therein, shall be stayed only if a specific, reasoned order granting such stay is passed by the appellate court, after proper application of mind.

(II) For the grant of stay of execution of a decree in terms of Order XLI, a prayer to such effect has to be specifically made to the appellate court and the appellate court has the discretion to grant an order of stay or to refuse the same.

(III) Order XLI Rule 5(3) of the CPC provides for satisfaction regarding sufficient cause as a pre-condition for granting benefit of stay of execution of decree, and it casts an obligation upon the appellate court to record its satisfaction for stay of execution such decree.

(IV) The power of the Appellate Court to order stay of execution of the decree is circumscribed and made subject to the existence of a "sufficient cause" in favour of the appellant being shown. In order to ascertain whether a "sufficient cause" exists for the grant of stay of execution of a decree under Order XLI of the CPC, the appellate court as per sub-rule (3) of Rule 5 is required to examine:-

(i) Whether there will be substantial loss to the party applying for stay; (ii) Whether the application has been made without unreasonable delay; and

(iii) Whether security has been given by the applicant for due performance of the decree.

(V) For the grant of stay of execution of the decree, the appellate court is required, after perusing the materials on record, to assign reasons for its satisfaction regarding the existence of a "sufficient cause". Such reasons should be cogent and adequate. The reasons assigned must indicate the necessity for the status quo prevailing on the date of the decree and/or the date of making of the application for stay, to continue by granting stay, and not merely the reasons why stay should be granted.

(VI) Although, Order XLI Rule 5 of the CPC, uses the word "shall", yet a combined reading of the sum and substance of Rule(s) 1(3) and 5(5) would reveal, that for the grant of stay of execution, it is not mandatory for the appellate court to impose a condition for deposit of the amount in dispute. The aforesaid provisions make it abundantly clear that the appellate court, for the grant of stay of execution, has a discretion to impose a condition of deposit of the amount depending on the facts and circumstances of each case.

(VII) A deposit is not a condition precedent for an order of stay of execution of the decree by the appellate court. The only guiding factor and statutory mandate, for the grant of such stay of execution as indicated in Rule 5, is the existence of "sufficient cause" in favour of the appellant, on the availability of which the appellate court would be inclined to pass an order of stay.

(VIII) For the grant of benefit of an unconditional stay of execution of a decree, an exceptional case has to be made out before the appellate court. This discretion of the appellate court to grant an unconditional stay of execution of decree must not be exercised arbitrarily. It must be exercised sparingly and only if an exceptional case is made out for such stay in view of the peculiar facts and attending circumstances of the case before it.

(IX) A lodestar for bringing a case within the purview of "exceptional case" for the purpose of granting benefit of unconditional stay of the execution of money decree by the appellate court would be, if the money decree in question: -

(i) is egregiously perverse;

(ii) is riddled with patent illegalities;

(iii) is facially untenable; and/or

(iv) such other exceptional causes similar in nature.

(X) For the purpose of the grant or refusal of stay of execution of the decree under Rule 5 of Order XLI, it is immaterial whether the decree is a money decree or any other decree. The language couched in the said provision is very clear. Order XLI, Rule 5 of the makes no distinction between a money decree and other decrees, and the said provision applies with full rigour in both instances. Yet as a rule of prudence and established practice evolved over a period of time, no stay of execution of a money decree should be granted, except on the condition that the decretal amount be deposited in the court. However, such condition for deposit cannot be said to be mandatory and nonprescription thereof does not operate as a bar to staying the execution of a money decree.

(XI) There is no provision under Order XLI Rule 5 of the CPC imposing a mandate to deposit cash security as the only mode of security for execution of the decree. Security, for the purpose of the said provision, can be in the shape of property, bond and or in the form of an appropriate undertaking from the appellant to abide by the decree, seeking stay of execution."

6. The paragraph Nos.8 and 9 of the order dated 28/07/2022 are as follows :

> “8. Earlier, the Appellant (the original Defendant) agreed to file a private paper book. On that assurance, the original Plaintiff (the Respondent herein) said that pending the filing of that paper book by the Appellant and completion of record in Appeal, the Plaintiff/Respondent would not be put the decree into execution. The Appellant has not yet filed the paper book. The Appellant cannot take advantage like this by not filing the paper book it had promised it would, and also claim continued protection against execution on the strength of the statement made by the Advocate for the original Plaintiff.
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> 9. We will give the Appellant/Original Defendant time until 30th August 2022 to file a complete paper book. If it is not done by that date, the statement made by the Respondent will no longer survive or continue and the original Plaintiff/Respondent will be entitled to proceed in execution. If the paper book is filed by that date, the Plaintiff's/Respondent's statement will continue.”

7. From these observations, it is clear that the learned counsel for the Plaintiff/Respondent had given the assurance that pending the filing of the paperbook and completion of the record in the Appeal, the Plaintiff would not put the decree into execution. The Division Bench went on to observe that the Appellant cannot take advantage by not filing the paperbook it has promised and would also claim continued protection. The Division Bench had extended the time to file the paperbook till 30/08/2022. Inspite of this, the learned counsel for the Plaintiff did not take any steps to furnish the paperbook and to complete the record so that the Appeal could proceed further.

8. In the present application also there is absolutely no reason mentioned as to why steps were not taken between July 2022 till February 2026 when the earlier learned counsel for the Plaintiff passed away. The Applicant cannot be permitted to take advantage of his not complying with the order dated 28/07/2022. Therefore, we are not inclined to grant stay to the execution proceedings which have proceeded further. However,

since, the learned counsel for the Applicant states that the paperbook is ready, we are permitting him to file the paperbook with copy to the other side. The paperbook shall be filed within a period of four weeks from today. The hearing of the Appeal is expedited.

9. Interim application is disposed of.

(RANJITSINHA RAJA BHONSALE, J.) (SARANG V. KOTWAL, J.)