

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

WRIT PETITION NO. 109 OF 2026

Madhukar Rambhau Gaikwad (since
deceased) through LRs 1A Datta Madhukar
Gaikwad and ors.

...Petitioners

Versus

Suresh Sanwarmal Todi and anr.

...Respondents

Ms. Shraddha Pawar, for the Petitioners.

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**CORAM: N. J. JAMADAR, J.
DATED: 13th JANUARY, 2026**

Oral Order:-

1. Heard the learned Counsel for the petitioners.
2. By this petition, the petitioners pray to quash and set aside the order dated 5th December, 2025, whereby the Executing Court has declined to stay the execution of the decree in RCS/116/2005 and the subsequent order dated 19th December, 2025, whereby the Court declined to stay the execution of the possession warrant.
3. The learned Civil Judge was persuaded to reject the applications as there was no stay in the appeal or any other proceeding filed by the petitioners.

4. The learned Counsel for the petitioners submitted that against the decree of eviction passed in RCS/116/2005, the original defendant No.1 had preferred Civil Appeal No.47 of 2022. In the said appeal, Madhukar Gaikwad, the predecessor-in-title of the petitioners, was impleaded as respondent No.2. Respondent No.2/Defendant No.2 had filed a cross-objection in the said appeal. However, the said cross-objection was not decided by the learned District Judge and, therefore, the petitioners have filed review application before the learned District Judge. In the said review application, the petitioners have prayed for stay to the execution and operation of the decree passed in RCS/116/2005. The said stay application has yet not been heard and decided. In the meanwhile, the Executing Court had issued the possession warrant. By a further order dated 7th January, 2016, the Executing Court has also granted police protection.

5. It was submitted that, the execution of the possession warrant is scheduled on 16th January, 2026 and the review application is posted before the learned District Judge on 17th January, 2026. Therefore, the petitioners have an apprehension that they would be dispossessed during the pendency of the review application before the District Court.

6. Evidently, there is no stay to the execution and operation of the decree passed by the trial Court. While dismissing Civil Appeal No.47 of 2022, the learned District Judge had adverted to the case of defendant No.2 – the predecessor-in-title of the petitioners. In the absence of any stay to the execution and operation of the eviction decree, the learned Civil Judge was justified in declining to suspend or stay the execution of the possession warrant.

7. Since a submission is made on behalf of the petitioners that, the review application is pending before the District Court in which the petitioners are seeking stay to the execution and operation of the possession warrant, the learned District Judge is requested to prepone the hearing in review application and list the same on 15th January, 2026 and pass an appropriate order on the application for stay to the execution of the decree preferred therein.

8. With the aforesaid direction, the petition stands disposed.

[N. J. JAMADAR, J.]