

MHAH010080772025



IN THE COURT OF DISTRICT JUDGE-5 AT AHMEDNAGAR.

REGULAR CIVIL APPEAL NO. 293/2025

**Ashok Bansi Jadhav & Anr.
Vs.
Balwant Khandu Kokate & Ors.**

ORDER BELOW EXH. 5

This is an application filed by the appellants/original defendant nos.4 & 5 for grant of stay to the effect and operation of the Judgment and decree passed in Regular Civil Suit no. 54/2021 on 16.09.2023 by Jt. Civil Judge Senior Division, Ahmednagar till the decision of main appeal.

2. The present appeal is filed by the original defendant nos.4 & 5 against *ex parte* Judgment and decree. The Ld. Trial Court decreed the suit *ex parte* and declared that defendant nos.4 & 5 encroached on 14 R area of the suit property and also directed that defendant nos. 4 & 5 be given the possession of said 14 R area to the plaintiff within the period of two months from the date of Judgment. The Appellants contended that the suit property is agricultural land and their primary source of livelihood. If the decree is executed and they are dispossessed before the appeal is

heard, they will suffer irreparable loss, which cannot be compensated in terms of money.

3. The appellants further contended that they have a strong prima-facie case and that the Ld. Trial Court's decision regarding the encroachment was based on an *exparte* situation where their side was not fully represented. A shop belonging to the appellants was already demolished for road widening and further loss of possession during the appeal would render the appeal infructuous. Respondent no.1 had filed Darkhast no.214/2023 and in that proceeding, possession warrant is issued. Hence, they prayed that the effect and operation of Judgment and decree be stayed till decision of main appeal.

4. The appellants filed pursis vide Exh.14 and contended that they have not claimed any relief against the respondent nos.2 to 18 in appeal and Exh.5.

5. The plaintiff i.e. respondent no.1 in present appeal appeared and filed his say at Exh.12 and opposed the application. He submitted that the contents in application are false. He contended that the appellants have been dilatory, failing to deposit the costs of Rs.5,000/- as mandated by the Hon'ble High Court in Civil Revision Application No. 254 of 2025. He further contended that the appellants have not filed the Paper Book as required by the Civil Manual. The Judgment passed by Trial Court is legal and proper. Hence, he prayed that no need to stay the effect and

operation of the execution of the Judgment and decree. Hence, he prayed to reject the application.

6. Perused the application and say filed by the respondent. Heard both the parties at considerable length.

7. It is pertinent to note that *exparte decree* had obtained by the respondent. The respondent had filed Execution Proceeding bearing no. 214/2023 against the appellants. In that Execution Proceeding, the possession warrant had issued. The appellants have already deposited the initial cost and appeal is registered accordingly. It shows that the appellant wants to contest the matter on merits. The appeal is continuous of suit. In Execution, if the encroached portion is handed over to the respondent and the decree is executed than the appeal become infructuous. If the Judgment and decree is not stayed, the appellant will face irreparable loss, which cannot compensate in terms of money. Hence, considering the above facts and circumstances, till decision of the main appeal, the effect and operation of Judgment and decree be stayed. In view of the above facts and circumstances, I proceed to pass the following order -

ORDER

1.	Application below Exh.5 is allowed.
2.	The effect and operation of the Judgment and decree passed in Regular Civil Suit no. 54/2021 on 16.09.2023 by Jt. Civil Judge Senior Division,

	Ahmednagar is stayed till final decision of the main appeal.
4.	Inform the Ld. Execution Court accordingly.
5.	Both the parties are directed to argue the matter on main appeal, otherwise necessary order will be passed.

Date : 15.04.2026.

(Rajesh M. Tayade)
District Judge-5,
Ahmednagar