


MHAH080023622022 	<b><u>ORDER BELOW EXH-38 IN REG.</u></b> <b><u>DKST. NO. 149 OF 2022.</u></b> (Karbhari Gopala Pawbake <b>Vs.</b> Uttam Murlidhar Pawbake)
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The present application has been filed by the decree-holder for execution against the judgment-debtor in accordance with the decree passed in the original Regular Civil Suit No. 101/2006. In the present execution proceedings, pursuant to the order passed below Exhibit 25, the Court Commissioner, T.I.L.R., Sangamner, carried out the measurement of the suit property and submitted a measurement map. Since the said measurement map submitted by the Court Commissioner is not accepted and admitted by the judgment-debtors, the judgment-debtors had filed an application at Exhibit 35 seeking to record the evidence / oral testimony of the surveyor. The application of the judgment-debtors at Exhibit 35 has been rejected by order dated 02/02/2026. Therefore, against the said order, the judgment-debtors are required to urgently approach the Hon'ble High Court, Bench at Aurangabad, for appropriate judicial relief.

**02.** However, the application of the decree-holder at Exhibit 33 has been allowed, the decree-holder is making attempts to initiate immediate coercive proceedings against the judgment-debtors, and if such action is taken, grave injustice will be caused to the judgment-debtors. Since the judgment-debtors intend to urgently approach the Hon'ble

High Court against the order passed below Exhibit 35, it is humbly prayed that, in the intervening period, the execution and implementation of the order passed below Exhibit 33 be stayed for a period of 15 days, and appropriate orders be passed accordingly.

**03.** Decree holder filed say on the backleaf of application and submitted that, there is no such provision to stay order of execution of decree confirmed by Hon'ble High Court. JD is avoiding to comply the decree for last so many years. Application is without merit and liable to be not worth considerable. Therefore, prayed to reject the application.

**04.** Heard both sides. Perused the provision of Order 21 Rule 26(1) of the CPC, which provides that:

(1) The Court to which a decree has been sent for execution shall, upon sufficient cause being shown, stay the execution of such decree for a reasonable time, to enable the judgment-debtor to apply to the Court by which the decree was passed, or to any Court having appellate jurisdiction in respect of the decree or the execution thereof, for an order to stay execution, or for any other order relating to the decree or execution which might have been made by such Court of first instance or Appellate Court if execution had been issued thereby, or if application for execution had been made thereto.

**05.** This provision provides that, the Court means the Court executing the decree shall upon sufficient cause being shown, stay execution of decree for a reasonable time, to enable the JD to apply to the Court having appellate jurisdiction in respect of execution, for an order to stay any

other order relating to the decree. This shows that, any order passed in execution proceeding giving effect to execution of decree if required to be challenged, some reasonable opportunity for a reasonable time can be granted as per Order 21 Rule 26(1) of the CPC.

06. By order below Exh.33, directions are issued for appointment of bailiff to execute decree in RCS No. 101/2006. Admittedly the decree is confirmed by the Hon'ble High Court as asserted by DH. However, presently the JD is submitted his intention to challenge the order below Exh.33 in this proceeding and not the decree in RCS No. 101/2006. Therefore, provision under Order 21 Rule 26(1) of the CPC is applicable. Accordingly, it will be justifiable to grant some reasonable opportunity to JD. Hence, I proceed to pass following order:

<b><u>ORDER</u></b>	
<b>1.</b>	Application Exh.38 is partly allowed.
<b>2.</b>	Implementation of order below Exh.33 be suspended for limited period of next 10 days i.e. till 13/02/2026. In absence of any stay order from the Appellate Court order below Exh.33 dated 02/02/2026 shall be automatically be effected.

Place : Sangamner  
Date : 04/02/2026

**(S. B. Dhawale)**  
Jt. Civil Judge, Jr. Division,  
Sangamner.