

MHBU040003812024



Reg.Civil Appeal No.20/2024

Zubaida Nasrin & others

Vs

Abdul Sattar

Order below Exh.28

1. This application is filed by the appellants/legal heirs of original defendant requesting to grant stay to the execution of impugned judgment and decree dated 21.01.2022 passed in Reg.Civil Suit No.42/2012 by the 2nd Jt.Civil Judge Junior Division, Khamgaon.
2. Respondent/original plaintiff has resisted the application by filing say below Exh.28.
3. Mr. Z.B.Shaikh, Ld. Advocate for the appellants has submitted that, this Court after hearing both sides has granted the stay order below Exh.5 on dated 17.08.2024 till the decision of main appeal or till one year whichever is sooner from the date of order on certain conditions. He submitted that thereafter on the application of appellant vide order below Exh.17 this Court has extended the stay order for one month. He submitted that this Court vide order below Exh.24 has extended the stay order for two months. He submitted that, thereafter on 13.01.2026 on the application of appellant this Court has extended the stay order for four weeks. He submitted that on 16.02.2026 the appellants have filed the application before the Ad-hoc District Judge-1, Khamgaon for extension of stay order passed below Exh.5 till the decision of appeal on merits. But, the Hon'ble

Court has rejected the application on the ground that on 16.02.2026 no stay order was in force. He submitted that, in fact the order below Exh.5 was in force till 16.02.2026. He submitted that meanwhile the Arbi Madarsa Panch Committee, Khamgaon has filed the application under Order 1 Rule 10 of CPC for joining the party to them in present appeal vide Exh.19 and said application was pending before this Court. He submitted that, due to it the final argument of appeal on merits could not be heard. He submitted that the respondent has already filed the execution proceeding before the Executing Court and in such circumstances if the stay order is not granted to the impugned judgment and decree, then the purpose of filing the appeal will be frustrated. Hence, he urged to allowed the application and grant the stay to the impugned judgment and decree dated 21.01.2022 passed in RCS No.42/2012 till the decision of main appeal on merits.

4. On the other hand, Mr. S.V.Agrawal, Ld. advocate for the respondent has submitted that, after granting stay order on 17.08.2024 below Exh.5, the appellants was expected to argue on main appeal within the period of one year. However, appellant by filing different applications has prolonged hearing on main appeal. He submitted that there is no good and strong ground to grant the stay to the execution of the decree. He submitted that if the stay is granted, then the appellants will gets opportunity to prolong the hearing and decision of the main appeal on one or other pretexts. Hence, he urged he reject the application.

5. I have considered the submission of both sides. Perused the application and say filed by the respondent.

6. As per record and proceedings this Court vide passing order below Exh.5 on dated 17.08.2024 the execution of judgment and decree dated 21.01.2022 passed in Reg.Civil Suit No.42/2012 by the 2nd Jt.Civil Judge Junior Division, Khamgaon was stayed till decision of

the main appeal or until one year whichever is sooner from the date of the order on the condition that a) The appellant shall pay or deposit decretal amount in this Court within two weeks from the date of this order. b) On failure to compliance of this order by appellants, the stay order automatically stands vacated. Both parties shall co-operate to decide the appeal within one year from the date of the order.

7. The record shows that the stay order was in force till 16.08.2025. It was expected from the both parties to argue on main appeal within the period of one year. The record shows that thereafter on 01.07.2025 appellant has filed application Exh.11 for amendment in the written statement. He also filed the application Exh.12 for production of additional evidence. Meanwhile, on 14.08.2025 on the application of appellant Exh.16 the stay order was extended for two months. The application Exh.11 was decided on 16.09.2025 and rejected by this Court. Similarly the application Exh.12 was rejected by this Court on 07.02.2026. Meanwhile on the application Exh.17 filed by the appellant on 16.10.2025 the stay order was extended for one month. The record shows that at the instance of appellant third party Arbi Madarsa has filed the application Exh.19 under Order 1 Rule 10 of the CPC to add it as party respondent. Said application was rejected by this Court on 24.04.2026. Meanwhile, on the application of Exh.24 filed by the appellant on 15.11.2025 the stay order was extended for two months. Thereafter, on the application Exh.26 filed by the appellant on 13.01.2026 the stay order was extended for four weeks. Thereafter, on 16.02.2026 appellant has filed application Exh.27 for extension of stay order and same has been rejected by the Ad-hoc District Judge-1 Khamgaon being In-charge of this Court.

8. Present application is filed by the appellant on 21.02.2026 seeking stay order. In the light of above scenario it shows that in-spite of granting the stay order for one year and thereafter extension of stay

order, the appellant instead of co-operating for hearing to decide the appeal within one year has tried to prolong the hearing by filing different application. Considering above aspect, it would not be just and proper to grant the stay again. Admittedly, since 11.05.2026 summer vacation is going on, therefore, no execution of decree is possible. Hence, it would be just and proper to keep the appeal for hearing on main appeal on first day over the summer vacation. In the light of above reason and discussion, application deserves to be rejected. In the result, I pass the following order :-

ORDER

- (1) The application Exh.28 is hereby rejected.
- (2) Costs in cause.

Date : 07.05.2026
Place: Khamgaon.

(G. B. Jadhav)
District Judge-2, Khamgaon

Certificate

I affirm that the contents of this P.D.F. file is correct, word to word as per original order.

Name of Court : Addl. Sessions Judge, Khamgaon,
Dist.Buldana.

Name of Steno : G.P. Bhonde (Stenographer Grade-II)

Dictated on : 07.05.2026

Checked & Signed on : 07.05.2026

Decided on : 07.05.2026

Uploaded on : 07.05.2026