

**ORDER BELOW APPLICATION EXH.28 IN R.D.NO.2/2015**

**CNR No.MHGO06-000278-2015**

Judgment debtor No. 1 is filed present application for stay the execution proceeding. She contended that, she has to file appeal against the Judgment passed Dt. 09/04/2009. She further contended that, she need some time for preferring appeal and to take stay order from appellate court. she contended that there is a strong case in her favour in appeal. If application is not allowed then she will cause irreparable loss. She further contended that, present execution proceeding is not tenable because on the spot more people have made their construction. hence, prayed to allow the application.

2. On the other hand decree holder contended that, the present application is not tenable. The Hon'ble court have no jurisdiction to grant stay. Hence, prayed to reject the application.

3. Heard Counsel of both the parties. Perused documents filed on record minutely. Decree for possession is passed in R.C.S. No.82/2007 Dt.09/04/2009. This execution petition for executing of above decree is pending since 2009.

4. In my opinion, in order to appreciate the arguments advanced by both the Counsel and to have a close scrutiny of Order 21 Rule 26 of Code of Civil Procedure, it is necessary to reproduce Order 21 Rule 26 for ready reference. That rule is as under.

**26. When Court may stay execution.** - (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 there of for an order to stay execution, or for

any other order relation 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.

(2) Where the property or person of the judgment-debtor has been seized under an execution, the Court which issued the execution may order the restitution of such property or the discharge of such person pending the result of the application.

(3) **Power to require security from, or impose conditions upon, judgment-debtor.**- Before making an order to stay execution or for the restitution of property or the discharge of the judgment-debtor, 21[the Court shall require] such security from, or impose such conditions upon, the judgment debtor as it thinks fit.

The bare reading of rule, it makes clear that upon sufficient cause being shown by Judgment debtor, court has power to stay the execution of such decree for a reasonable time.

5. If the present matter is considered in the light of above legal position, it appears that, Judgment Debtors have not given any sufficient reason. The present execution petition for executing of above decree is pending since 2009. Sufficient time has already been given to the J.D. for obtaining necessary Order. But she failed to obtain any order till today. There is no justifiable reason to stay the proceeding. Thus, following order is passed.

### **ORDER**

Application is rejected, costs in cause.

Dt.02/12/2019

(P.S.Sonkamble)  
Civil Judge (J.D.) Arjuni/Morgaon.

**CERTIFICATE**

This is to certify that, the contents of this uploaded judgment/order are same and correct as per the original judgment/ order, signed by the Presiding Officer.

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