

**Common Order below exh.59 and 64**

Application at Exh.59 is filed by Ms. Siddharth Agro Products, i.e., the objectioner–petitioner, and application at Exh.64 is filed by J.D. No.11, i.e., Vinit Sahani, seeking stay of execution in the present darkhast.

**2]** It is submitted by the objectioner–petitioner that he has filed an objection petition under Order XXI Rule 97 of the Code of Civil Procedure, 1908, resisting obstruction to the delivery of possession to the decree holder in respect of Gut No.76 admeasuring 1 Hectare 67 R. It is contended that he is the owner and in possession of the said property, having acquired the same through auction. He is running his business on the said land and is a bona fide purchaser for value. It is further submitted that the decree passed in R.C.S. No.134/2009 is not binding upon him. He has invested crores of rupees in the business conducted on the said property. Hence, in the interest of justice, execution of the decree deserves to be stayed till the decision of the objection petition.

**3]** Whereas, J.D. No.11 has submitted that he has preferred an appeal before the Hon'ble District Court, Jalna, bearing R.C.A. No.113/2016. The matter is posted for hearing on the stay application as well as the status quo application. It is contended that the decree holders are

making haste to execute the decree. He has a reasonable hope of success in the appeal and, therefore, prayed that execution proceedings be stayed till appropriate orders are passed on the stay application in R.C.A. No.113/2016.

4] Decree Holder No.1 has filed their say at Exh.63 and submitted that the objectioner–petitioner has purchased the suit property during the pendency of the suit and, therefore, the said transaction is hit by the doctrine of *lis pendens* and is not binding on the present decree holders. It is further submitted that the sale deed executed in favour of J.D. No.11 has already been declared void by the judgment and decree passed in R.C.S. No.134/2009. The objectioner–petitioner was not a party to the suit and, therefore, has no right to file the objection petition. It is further contended that the present application has been filed prior to any actual obstruction to delivery of possession and, hence, is premature and liable to be rejected.

5] Heard learned Advocate Shri S. G. Rathi for the objectioner–petitioner, learned Advocate Shri T. B. Pisure for J.D. No.11, and learned Advocates Shri A. V. Sable and Shri D. Y. Dabhade for the decree holders. I have carefully considered the submissions advanced by them.

6] On perusal of the record, it appears that the present execution proceedings arise out of the judgment and decree passed in R.C.S. No.134/2009. The said suit was filed by the decree holders for partition and separate possession of

Gut No.76 admeasuring 8 Hectares 35 R, situated at Village Khatgaon, Taluka Badnapur, District Jalna. The suit came to be decreed on 13.06.2016, and the present darkhast has been filed by the decree holders for execution of the said decree by forwarding it under Section 54 of the Code of Civil Procedure, 1908.

7] The objectioner–petitioner has filed an objection petition under Order XXI Rule 97 of the Code of Civil Procedure, 1908, resisting delivery of possession of a part of the suit property admeasuring 1 Hectare 67 R. It is also an admitted position that Regular Civil Appeal No.113/2016, arising out of the decree passed in R.C.S. No.134/2009, is pending before the Appellate Court. The objectioner–petitioner as well as J.D. No.11 have sought stay of the execution proceedings mainly on the ground that they have a reasonable hope of success in the said appeal.

8] It is not in dispute that the appeal arising out of R.C.S. No.134/2009 has been pending since the year 2016. However, till today, no order of stay of execution has been passed by the Appellate Court, nor has any such order been placed on record by either party. The appeal has remained pending for about nine years. It is further seen from the record that issues have already been framed on the objection petition, and the matter is presently fixed for leading evidence by the objectioner–petitioner regarding the maintainability of his objection petition.

9] So far as the prayer for stay of execution is concerned, the legal position is well settled. Order XXI Rule 26 of the Code of Civil Procedure applies only in cases of transferred decrees. In the present case, the applicable provision is Order XLI Rule 5(2) of the Code. It is clear that the power of the Executing Court to stay execution is limited only up to the stage of filing of the appeal.

10] In the present case, the appeal has already been filed and is pending before the Appellate Court. Once the appeal is filed, the Executing Court has no jurisdiction to stay the execution of the decree in the absence of a specific stay order passed by the Appellate Court. Since no such order has been produced on record, both the applications seeking stay of execution are liable to be rejected.

11] In view of the directions of the Hon'ble Supreme Court to expedite disposal of execution proceedings, it is necessary to proceed further with the execution. Therefore, it is necessary to direct the objectioner-petitioner to lead his evidence in support of his objection petition. Hence, the following order is passed.

### **ORDER**

1. Applications at Exh.59 and Exh.64 are hereby **rejected**.
2. The objectioner-petitioner shall lead evidence on the objection petition under Order XXI Rule 97 of the Code of Civil Procedure.

3. The execution proceedings shall proceed further in accordance with law.
4. No order as to costs.

Date:- 02.01.2026

Sd/-  
**(Shri.G.N.Langhe)**  
Civil Judge J.D.,  
Badnapur.