

## **ORDER BELOW EXH. 56 IN R.C.S.No. 41/2023**

Plaintiff filed this application and contended that his suit is dismissed, so he will file appeal against this decision. So prayed to stay the judgment till appeal period.

2. Learned advocate for defendant filed say at Exh-57 and stated that application is not tenable as per law. Plaintiff led evidence and as they failed to prove their claim, suit is dismissed. As suit of the plaintiff is dismissed there is no executable decree is passed in his favour. Therefore said application is liable to be rejected.

3. Heard both the learned advocates. Learned advocate for plaintiffs argued that the stay was granted to the construction defendant no.1. As suit is dismissed defendant no.1 will start construction in suit property. So prayed for stay of judgment till period of appeal.

4. Learned advocate for defendants argued that plaintiff not filed supporting affidavit to the application. By the said judgment executable decree is not passed. So plaintiff is not entitled for execution of decree. The provision of Order 41 Rule 5 of Civil Procedure Code is power of the appellate court. So prayed for rejection of plaintiff application.

5. Plaintiff not stated that if judgment not stayed they will suffer loss. I have perused Order 41 Rule 5 of Civil Procedure Code. According to said provision execution of an appealable decree can be stayed if the Court is satisfied by conditions stated in sub rule 3. Plaintiffs filed said suit for partition and permanent injunction. The suit of the plaintiff is dismissed. So no execution proceeding will lie from said judgment by plaintiff as well as by defendant. As per Order 41 Rule 2 (5) it is stated that where the appellant fails to make deposit of furnish the security specified in sub-rule (3) of Rule 1 the court shall not make an order staying the execution of the decree.

6. So no such execution will lie from said judgment, so question of stay of judgment does not arise. Therefore application is rejected.

Date 05.05.2026  
Place: Gadhinglaj

D.M.Pawar  
Civil Judge Junior Division  
Gadhinglaj