

ORDER BELOW EXH.5

Heard both the counsels. Learned counsel of the applicants submit that in execution proceeding before executing court the possession warrant has been issued and if stay is not granted the applicants would lose their possession over suit property. The suit was filed for recovery of encroached portion. As far as applicants are concerned, their encroached portion is 30 R. and they have been directed to hand over that encroached portion to plaintiff. Learned counsel of the applicants argued that in the original suit, the then counsel of the applicants did not intimate anything about the progress of the suit to them and the suit was decided without written statement of the applicants. They were ignorant about the fact that suit came to be decreed and they got knowledge when possession warrant was issued against them.

On the other hand, learned counsel of the respondents resisted the application. He pointed out that there is inordinate delay in preferring this appeal and delay has not been properly explained. He would also submit that applicants were having knowledge about the progress of suit as they were in receipt of the notice issued by the court commissioner. So also, they were served with notice in execution proceeding.

2. I have gone through the record and judgment of learned trial court. It was decided without written statement of the

applicants. No doubt, delay is more than three years, but this stay is being sought only till the decision of main application of delay condonation. Learned counsel of the applicants undertook that he would argue the delay condonation application within two months. If the matter i.e. delay condonation application is going to be decided within two months, I think that granting of stay for such short period would not prejudice the respondent and they will have an opportunity to get the matter decided within two months. Hence, I am inclined to grant stay to the execution of the judgment and decree in RCS No. 134/2017. Accordingly, I pass following order.

ORDER

1. The execution and operation of judgment and decree passed in RCS No.134/2017 is hereby stayed only to the extent of applicants and as far as recovery of encroached portion from the other JDs is concerned, there will be no stay.
2. The applicants are directed to argue this matter finally within two months.
3. If applicants are found seeking adjournments for getting benefit of stay order, the said order will be automatically vacated after two months.

Date: 24/04/2026

[Vidyadhar S. More]
Adhoc District Judge-1, Latur.