

ORDER BELOW EXH. 05 IN CIVIL M.A. NO.30/2026

(Parshuram Panvelkar Vs. Mahadeo Bhure (Dead) Thr.Lrs.)

[CNR No.MHRG01-000199-2026]

Background :-

The applicant has filed an application for restoration of Regular Civil Appeal No.201/2013 which came to be dismissed for default on 19.10.2022. The restoration application is accompanied by an application for condonation of delay.

02. Pending the said restoration and delay condonation applications, the applicant has filed the present application seeking stay of execution proceedings arising out of decree dated 27.08.2013 passed in Regular Civil Suit No.23/2011, whereby possession of 16.9 Gunthas was directed to be delivered.

It is an admitted position that :-

03. The appeal was dismissed for default; ii) Restoration is not yet allowed; iii) Delay in filing restoration is yet to be condoned; iv) Execution Application No. 3/2024 has been filed; v) Order below Exh.16 has been passed issuing possession warrant.

It is further noted that notice of the present stay application is yet to be served upon the respondents.

Legal Position :-

04. The applicant seeks stay pending condonation of delay in restoration.

At this stage, it is necessary to note :-

The appeal presently stands dismissed. ii) Restoration application is pending. iii) Delay condonation is yet to be

decided.

05. Under Order XLI Rule 5 CPC, filing of appeal does not automatically operate as stay. Further, Order XLI Rule 3-A(3) CPC contemplates that where appeal is filed beyond limitation, the Court shall not ordinarily grant stay unless delay is condoned.

06. The Hon'ble Bombay High Court in Bhagwan s/o Ganpatrao Godsay vs Kachrual s/o Bastimal Samdariya, 1987 (2) Bom C.R. 153 (Aurangabad Bench) has examined the scope of Order XLI Rule 3-A(3) CPC. The judicial approach emerging from the said decision and subsequent practice indicates that ordinarily stay should not be granted unless the delay application is first considered.

Therefore, grant of unconditional stay at this stage would not be proper.

Present Case Assessment :-

The decree is of the year 2013.

The appeal was dismissed in 2022.

Execution proceedings have been initiated in 2024 and possession warrant has been issued.

The applicant contends that he was seriously ill and therefore could not prosecute the appeal.

However, as of today : Delay is not condoned; ii) Restoration is not allowed; iii) No stay order exists; iv) Respondents are yet to be served in this stay application.

07. Granting a blanket stay without hearing the decree-holder and without condoning delay would amount to suspending execution of a decree which has attained finality at this stage.

08. At the same time, if immediate possession is executed before delay condonation is heard, and if restoration is subsequently allowed, complications may arise. Therefore, limited ad-interim protection for a short duration is required only to preserve the situation till respondents are heard.

Balance of Convenience :-

09. The decree-holder has a subsisting decree. The applicant seeks interim protection without respondents being heard.

In such circumstances :-

10. No final stay order can be passed; ii) However, limited ad-interim arrangement may be justified; iii) Such arrangement must be time-bound and conditional.

ORDER

1. The present stay application is taken up for consideration. Notice to respondents is yet to be served.
2. Issue notice to respondents, returnable on **09-03-2026**.
3. By way of ad-interim arrangement, execution of the possession warrant issued in Execution Application No. 3/2024 shall remain stayed for a period of FOUR WEEKS from today, or till the next date of hearing, whichever is earlier.
4. This ad-interim protection is granted solely to enable service of notice and to consider the delay condonation and restoration applications after hearing both sides.

5. The applicant shall :-

(a) File medical documents in support of illness within two weeks; Deposit costs of Rs.15,000/- before this Court within two weeks.

6. If the applicant fails to comply with the above conditions, the ad-interim stay shall stand automatically vacated without further orders.

7. It is clarified that this order shall not be construed as expression of opinion on merits of delay condonation or restoration application.

8. No further extension of ad-interim stay shall be granted unless sufficient cause is shown after hearing the respondents.

Alibag,
Date :- 25/02/2026.

(S.D.Bhagat)
District Judge-3,
Raigad-Alibag.