

ORDER BELOW EXH.5

1. This is an application filed under Order XLI Rule 5 of the Code of Civil Procedure for staying the execution of decree under challenge.

2. The case of the appellant in brief is that they challenged impugned judgment and decree passed by the learned Jt. C.J.J.D., Pen in R.C.S. No. 134/2007 dated 12/05/2014. By this said decree the Trial Court directed them to remove encroachment. They never committed any encroachment. They have every hope of success in the appeal. If, the decree is executed they will suffer an irreparable loss.

3. Lastly, they claimed, application as prayed, may be allowed.

4. Other side failed to file say on the application.

5. After hearing arguments, I have gone through the record. It reveals that there is executable decree directing the defendants/appellants to hand over actual possession of encroached area. The defendants/appellants are challenging the same. There is need to hear the appeal on merits. Meantime, there is need to stay the execution impugned judgment and decree. If it is not stayed, there is possibility the defendants/appellants might suffered irreparable loss. Hence, I pass the following order.

ORDER

1. Application Exh. 5 for stay is partly allowed as follows :-

(i) The execution and implementation of impugned judgment and decree in R.C.S. No. 134/2007, dated 12/05/2014 is hereby stayed, until further order or till the decision of the appeal which is earlier.

(ii) The hearing of the appeal is expedited.

Alibag.

(R.G.Malashetti)

Dated 06/08/2019.

District Judge-3, Raigad-Alibag.