

MHRG140001902025



**COMMON ORDER BELOW EXH-28, 29 & 32**

1. This common order shall govern and dispose of three interdependent applications. Exhibit-28 is filed by the Decree Holder praying for the immediate issuance of a possession warrant. Conversely, Exhibit-29 and Exhibit-32 are filed by the Judgment Debtor praying to defer the execution proceedings and stay the issuance of the warrant.

2. The brief factual matrix leading to these applications is that, vide an earlier common order dated 24.04.2026 passed below Exh-26 and Exh-27, this Court had deferred the execution proceedings till 02.05.2026. This was done on the premise that the Judgment Debtor's application for stay of execution, filed in Regular Civil Appeal No. 7/2025 before the Hon'ble District Court, Panvel, was already heard and kept for pronouncement of orders on 02.05.2026.

3. Through Exh-28, the Decree Holder contends that liberty was granted by this Court in the order dated 24.04.2026 to press for execution if no stay order is produced. Since the Judgment Debtor has failed to produce any stay order from the Hon'ble Appellate Court, the Decree Holder presses for the immediate vacating of the abeyance and issuance of the possession warrant ordered earlier below Exh-12. The

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Decree Holder has filed strong objections to Exh-29 and Exh-32, contending that the Judgment Debtor is merely protracting the proceedings.

4. Through Exh-29 and Exh-32, the Judgment Debtor submits that on 02.05.2026, 06.05.2026, and subsequently, the Hon'ble District Judge, Panvel, was on administrative leave. Consequently, the stay application, which is already ripe for orders, could not be decided. The Judgment Debtor has produced online roznamas to substantiate this claim. It is further pleaded that since the original decree is sub-judice, issuing a possession warrant at this juncture would render the appeal infructuous and cause irreparable loss.

5. I have heard the Ld. Counsel for both parties and meticulously perused the case record. The core issue for determination is whether the executing court should proceed with the execution when the Appellate Court is seized of the stay application, but the order is delayed due to the Presiding Officer's leave.

6. It is an undisputed fact that arguments on the stay application in RCA No. 7/2025 are concluded. The delay in the pronouncement of the order by the Hon'ble District Court, Panvel, is purely on account of the Hon'ble Presiding Officer being on administrative leave. It is a well-settled principle of law, encapsulated in the maxim 'Actus Curiae Neminem Gravabit' (an act of the court shall prejudice no man), that a litigant cannot be made to suffer due to systemic delays or the unavailability of the Judge. The Judgment Debtor

cannot be penalized for the Hon'ble District Judge being on leave.

7. Furthermore, the powers of this Court under Order XXI Rule 26 of the Code of Civil Procedure, 1908, are explicitly designed to cater to such situations, empowering the executing court to stay its hands for a reasonable time to enable the judgment-debtor to obtain orders from the appellate court.

8. The Hon'ble Bombay High Court has consistently held that judicial propriety demands that when a superior court is actively seized of a stay application and has reserved it for orders, the executing court must exercise judicial restraint. If the possession warrant is issued today, it would overreach the jurisdiction of the Hon'ble Appellate Court.

9. Lastly, taking judicial notice of the fact that today, i.e., 08.05.2026, is the last working day before the commencement of the summer vacations, which end on 08.06.2026. If the possession warrant is executed today, the Judgment Debtor will be left remediless, unable to approach the Vacation Court or the Hon'ble High Court effectively. Applying the three golden principles of interim relief: the 'Prima Facie Case' favors the Judgment Debtor as his stay application is fully argued and awaiting orders; the 'Balance of Convenience' heavily tilts in maintaining the status quo during the summer vacation; and 'Irreparable Loss' would undoubtedly occur to the Judgment Debtor if evicted while his stay application is literally on the desk of the Hon'ble Appellate Court awaiting pronouncement. Therefore, the prayer of the Decree Holder in Exh-28 is premature and unmerited at this specific juncture. The prayers

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of the Judgment Debtor in Exh-29 and Exh-32 are highly reasonable, bona fide, and deserve to be allowed in the interest of justice. Hence, I proceed to pass following order:

**ORDER**

- [1] Application Exh-28 filed by the Decree Holder is hereby rejected at this stage.
  
- [2] Applications Exh-29 and Exh-32 filed by the Judgment Debtor are hereby allowed.
  
- [3] The execution proceedings, including the issuance of the warrant of possession below Exh-12, are hereby stayed and deferred till the reopening of the Courts after the summer vacation, i.e., till 10.06.2026.
  
- [4] The Judgment Debtor is strictly directed to produce the order of the Hon'ble Appellate Court on the next date without fail.
  
- [5] Costs shall be costs in the cause.
  
- [6] Matter to proceed on 10.06.2026.

Uran,  
Date – 08.05.2026

S. P. Wankhade  
Civil Judge J. D. Uran