

MHRG140001902025



ORDER BELOW EXHIBIT-38

1. By this order, this Court shall resolve and dispose of the application filed at Exhibit-38 by the Judgment Debtor, wherein he has prayed for staying the execution of the possession warrant and deferring today's proceedings on the ground of the unavailability of the Presiding Officer of the appellate court.

2. The facts, as stated in the application Exh-38, are that the present execution proceeding (Regular Darkhast No. 2/2025) is listed today before this Court. The Judgment Debtor has challenged the main judgment and decree passed in the underlying civil suit by preferring a statutory appeal, registered as Regular Civil Appeal (RCA) No. 7/2025, before the Hon'ble District Court, Panvel. In the said appeal, the stay application filed by the Judgment Debtor was scheduled for orders today, i.e., 29.06.2026. However, the Ld. Presiding Officer of the Hon'ble District Court, Panvel, is on official administrative leave today. Consequently, the stay application could not be decided. The Judgment Debtor has placed on record the copy of the Daily Status Report of the Appellate Court to support his contention and prays that the present execution proceedings be deferred and no coercive orders be passed.

3. The Decree Holder has strongly resisted this application by filing his written say/objections. The Decree Holder contends that the Judgment Debtor is consistently adopting dilatory tactics to frustrate the execution of a valid decree. It is argued that similar applications have been repeatedly filed at Exhibits 28, 29, 32, 35, and 36, and the executing court has already granted multiple indulgences. The Decree Holder points out that the possession warrant was ordered as far back as under Exhibit-12, and any further delay will cause grave injustice and deny him the fruits of the decree. Hence, the Decree Holder prays for the outright rejection of the application and the immediate execution of the possession warrant.

4. Perused the record, including the online Daily Status Report of RCA No. 7/2025 and the previous order sheets of this execution proceeding. The record reveals a prolonged tug-of-war between the Decree Holder's right to enjoy the fruits of his decree and the Judgment Debtor's right to seek appellate review. Earlier, this Court, vide a detailed common order dated 08.05.2026 passed below Exhibits 28, 29, and 32, stayed the execution till the reopening of the courts after the summer vacation (i.e., till 10.06.2026), applying the maxim 'Actus Curiae Neminem Gravabit' because the appellate court's Presiding Officer was on administrative leave when the stay application was ripe for orders. Subsequently, on 10.06.2026, below Exhibits 35 and 36, this Court again accommodated the Judgment Debtor till today (29.06.2026) as the appeal was scheduled for hearing before the appellate court on

18.06.2026, and the Judgment Debtor had not received an effective opportunity to argue due to the intervening court vacations.

5. Today, the Judgment Debtor has produced the Daily Status Report of RCA No. 7/2025. It is an undisputed fact of record that the appeal was listed today, i.e., 29.06.2026, before the Hon'ble District Court, Panvel. It is also verified that the learned Presiding Officer of the Appellate Court is indeed on administrative leave today. Thus, the circumstance preventing the Judgment Debtor from obtaining an order on his stay application is entirely beyond his control.

6. The law regarding the stay of execution by an executing court is well-settled. Under Order XXI Rule 26 of the CPC, the executing court is empowered to stay the execution of a decree for a reasonable time to enable the judgment-debtor to apply to the appellate court for a stay. In '**Atma Ram Properties (P) Ltd. vs. Federal Motors (P) Ltd.**', **2005 (1) SCC 705**, the Hon'ble Supreme Court observed that while an appeal does not operate as an automatic stay of execution, the appellate court or, in appropriate circumstances, the executing court, must balance the equities. Similarly, the Hon'ble Bombay High Court in '**Sudarshan s/o Ramlal vs. State of Maharashtra**', **2020 (4) Mh.L.J. 45**, has emphasized that judicial restraint must be exercised by executing courts when a superior appellate court is actively seized of a stay application. If the possession warrant issued below Exhibit-12 is executed today while

the stay application is pending decision due to the administrative absence of the appellate judge, the appeal itself would be rendered infructuous, causing irreparable injury to the Judgment Debtor.

7. However, the court must also safeguard the interests of the Decree Holder, who cannot be kept at bay indefinitely. The process of the court cannot be permitted to be abused as an instrument of endless delay. Therefore, while judicial propriety demands that one final, short opportunity be granted to the Judgment Debtor, it must be bound by strict timelines. No further applications for adjournment on similar grounds will be entertained.

8. Consequently, to balance the scales of justice, this Court deems it fit to grant a very short, peremptory stay on the execution of the possession warrant till the next date of hearing, on the strict condition that if no stay order is produced on the next date, the warrant of possession shall be executed forthwith. Hence, I proceed to pass the following order:

ORDER

- [1] The application Exhibit-38 filed by the Judgment Debtor is hereby partly allowed.
- [2] The execution of the possession warrant issued below Exhibit-12 is hereby stayed and deferred till 15th July, 2026, to enable

the Judgment Debtor to obtain appropriate stay orders from the Hon'ble Appellate Court in RCA No. 7/2025.

[3] The Judgment Debtor is strictly directed to produce the stay order of the Hon'ble Appellate Court on or before the next date without fail. It is made clear that if no stay order is produced by the next date, the execution proceedings shall proceed immediately, and the possession warrant shall be executed without further reference to this Court.

[4] Costs shall be costs in the cause.

Uran,
Date : 29.06.2026

(S. P. Wankhade)
Civil Judge, J.D., Uran