

MHSN020003532023



**ORDER BELOW EXH 28 IN REG DKST No.5/2023**  
(Madan Harsulkar v. Girish Lohana)

This is an application under Order 21 Rule 26 of the Code of Civil Procedure (CPC) submitted by Judgment Debtor (JD). Brief facts of the application are as under.

2. The judgment in RCS No. 499/2018 was assailed in first appeal RCA No. 254/2022. The appeal came to be dismissed. The JD again challenged the judgment in first appeal by filing second appeal before the Hon'ble Bombay High Court. JD got stamp number bearing No. 23990/2023. Considering this fact stay of execution is sought.

3. Decree holder (DH) resisted this application by filing his say. According to DH, number is not allotted to the petition before the Hon'ble Bombay High Court. JD is killing time of this Court by filing such an application. The decree is required to be executed. Application is untenable and hence sought rejection.

4. Heard the learned advocates of both sides. The decree in RCS No. 499/2018 is not only for recovery of arrears of rent as well as it is for recovery of vacant and peaceful possession from JD, of the suit property. The application for execution provides total arrears with expenses to the tune of Rs. 4,52,081/-. JD has not provided any satisfaction about payment of entire arrears of rent as aforesaid. DH has submitted a separate application at Exh. 15 for recovery of possession of suit property. The execution so sought is two fold as stated above. So far as Order 21 Rule 26 of CPC is concerned, the Court is required to assess sufficient cause from JD with regard to the fact that he is being enable to apply to the Court having

appellate jurisdiction for the stay of execution of for order relating to the decree for execution which might have been made by such Appellate Court. The facts of the instant application would unveil that JD has approached the Hon'ble Bombay High Court by challenging the order of the Hon'ble First Appellate Court. Stamp number is allotted. According to learned advocate of JD, the matter is for admission stage and under circulation orders. In this context, JD requires sufficient time. According to the learned advocate, this is sufficient cause available to JD.

5. Appeal is a continuation of suit. JD obviously requires sufficient time to put up his case before the Hon'ble High Court for necessary order. In this regard, Order 21 Rule 26(3) of CPC would be relevant for taking into consideration. It provides the power of Court to require security from or impose condition on JD before making order to stay execution. The Court can take security from JD or impose condition upon the JD as it thinks fit. In this matter, entire arrears of rent so adjudged in the execution petition are not satisfied by JD. In the instant application, JD has not made any clarification as to how much amount of arrears is outstanding. It is clear from the face of record that, arrears are outstanding. So far as imposition of conditions or security is concerned, in my opinion the condition on JD to pay entire arrears shall be imposed so that the decree can be partly satisfied. So far as the aspect of possession is concerned, second appeal is allegedly pending before the Hon'ble Bombay High Court and is under circulation orders. The JD must have sufficient opportunity to present his grievance before the Hon'ble Bombay High Court for necessary orders on the point of stay of execution proceeding with regard to possession and arrears. On this count, partly the execution petition can be stayed for certain period of time considering the pending appeal. In order to meet the ends of justice, I proceed to pass the following order.

<b><u>ORDER</u></b>	
1.	Application is partly allowed under Order 21 Rule 26 (1) of CPC.
2.	The execution of decree for recovery of possession of suit

	property in view of application Exh. 15 and order in the judgment RCS No. 499/2018 is stayed for the period of three months from today.
3.	The JD is directed to pay entire arrears of rent within two months as a condition within the purport of Order 21 Rule 26 (3) of CPC.
4.	The JD is directed to inform the Court about the order/stay order in the second appeal.
5	Both sides to take note of this order and act upon.

Date: 30.11.2023.

(Wahab A. Syed)  
2<sup>nd</sup> Jt. Civil Judge Junior Division,  
Sangli.

**CERTIFICATE**

I affirm that the contents of this P.D.F. File Judgment are same word to word, as per the original Judgment.

Name of the Stenographer	: A.P.Patil.
Name of Court	: 2 <sup>nd</sup> Jt. CJJD, Sangli.
Date	: 30.11.2023
Order signed by the	
Presiding officer on	: 30.11.2023
Order uploaded on	: 30.11.2023