

(CNR NO.MHSNO-4000833-2025)
ORDER BELOW EXH.5 IN CIVIL MISC. APPLICATION NO.48 OF 2025
(Sujata Shelake, etc. V/s. Tarabai Shelake, etc.)

The appellants have moved this application for grant of stay to the execution of judgment and decree passed in the learned Trial Court in R.C.S. No.411/2010 dated 03.10.2017. The say of respondent is called. Respondent Nos.2, 11 to 13 have filed reply below Exh.54. Heard respective advocates at length and perused the record. Respondent Nos.2, 11 to 13 are the main contesting parties, hence application is taken up for hearing.

2] In the application it is stated that appellants have challenged the above referred judgment and decree passed by Trial Court on the ground of illegality and perversity. Said judgment has caused irreparable loss and grave injustice to them. Learned Trial Court has partly decreed the suit filed for partition and declaration without giving sufficient and reasonable opportunity of hearing to present appellants. The appellants appeared before the Trial Court but their advocate did not inform them about the duty of filing written-statement. Therefore, they did not participate in the proceeding and the suit proceeded ex parte against them. They are also not aware of the final judgment passed in the suit. Later on respondent Nos.1 and 2 filed execution proceeding for the execution of impugned judgment passed by learned Trial Court, however at that time also the learned advocate for appellant did not give any information to them to file reply to the execution proceeding or course of filing appeal against the impugned judgment. Due to lack of knowledge, the appellants could not contest the proceeding before Trial Court. Moreover, they could not prefer appeal within

stipulated period. Hence, delay condonation application is filed. The execution proceeding is speedily proceeded in the court of Tahasildar by virtue of preliminary decree passed by the learned Trial Court. If the judgment and decree is not stayed, the execution will be completed in Watap Darkhast/SR/22/2020 as Watap Takta is already allowed by the Tahsildar.

3] It is vehemently argued by learned advocate for appellants that they have good case on merit. The execution and suit proceeding could not been contested due to lack of knowledge of law and misrepresentation made by their advocates. Hence by taking lenient view and considering the necessity of suspending execution, it is necessity to grant stay to the operation and execution of impugned judgment and decree dated 03.10.2017. If the execution is stayed, no prejudice would be passed to the respondents as they will equally get sufficient opportunity to contest the proceeding.

4] The respondents have filed their reply stating that the relief of stay can not be granted to the person who is not diligent over his right. The Civil Suit has been decided on 03.10.2017 and present application for delay condonation is filed after 2971 days of the impugned judgment. Said inordinate and unreasonable delay is sufficient to show the exact way how appellants are negligent over their right and Court proceeding. Merely by abusing or naming learned advocate for want of information, the appellants can not escape from their own duty towards legal proceeding. The delay is not properly explained. Learned Trial Court has provided every opportunity of hearing to the plaintiffs as well as defendants. The defendants themselves failed to appear and file written-statement though opportunity was given, hence, the appellants are not entitled

to any relief of lincency. So the relief of staying execution of impugned judgment and decree also can not be granted. The above defendants were added in the suit as additional defendants. They were duly served and appeared through their advocate. The suit was decided on merit hence, there is no reasonable ground to stay the execution proceeding proceeded against the appellants.

5] Generally, the order of stay can be passed by Appellant Court by resorting to the provisions incorporated in Order 41 Rule 5 of C.P.C. While granting stay, the court must consider and satisfy that substantial loss would result to the party applying for the stay unless the order is made or the applicant has moved the application without unreasonable delay or security has been given by the applicant for due performance of decree. In the present matter, it transpires that the appeal is yet not registered as the present application for delay condonation is not decided on merit. In the present application, fact in issue is whether there is reasonable ground for condoning delay occurred in filing appeal. As it transpires the application is filed with the delay of 2971 days. Apparently said ground itself is sufficient to deny the relief of stay to the applicant. The delay condonation application will be decided on merit. However, at this juncture it transpires that the delay is not of few days but of a major period of years together. The misrepresentation or lack of information on the part of advocate can not be extended to such limit to exempt party to the proceeding to take all precautions in order to proceed with matter. The party who appeared before the court, must be aware of its regular stages. Merely relying upon the advocates or showing their negligence, the party can not be absolved to their own responsibility. Moreover it

transpires that the judgment has been passed on dated 03.10.2017 and Watap Darkhast has been filed in the year 2020. The appellants themselves have submitted that, they appeared in the execution proceeding also. It means that the appellants were well aware of the suit proceeding as well as the impugned judgment passed therein. Therefore, looking to said circumstances I have arrived at the conclusion that appellants are not diligent over their own right. There is no reasonable ground to grant stay to the impugned judgment, decree and execution without getting satisfied about the substantial loss resulting to the parties. Moreover, it is pointed out by learned advocate for respondent during arguments that appellant has already obtained stay in the Watap Darkhast. This fact is not denied by appellant. If said point is considered, it can be very well ascertained that there is no urgency in this matter and there is no absolute need of stay. The present appeal hearing can be expedited in the interest of justice.

6] Therefore considering the aforesaid discussion, I have arrived the conclusion that there is no justified ground to stay the execution of judgment and decree passed in R.C.S. No.411/2010. Resultantly, I proceed to pass following order:-

ORDER

Application below Exh.05 stands rejected.

(A. H. Kashikar)

Adhoc District Judge-1, Islampur.

Date: 20.03.2026.

Certificate

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

Name of Stenographer : Chougule [Grade-2]

Court : Adhoc-District Judge-1, Islampur

Date : 20.03.2026

Order signed by the

Presiding Officer : 23.03.2026

Order uploaded on : 23.03.2026