

**ORDER BELOW EXH. NO. 87 IN R.D.NO.48/2007.**

1 Judgment debtor No. 2 has filed this application under Order 21 Rule 29 of the Code of Civil Procedure for staying the execution proceeding. It is contended that, the present execution petition has been filed to execute the decree passed by the Court in R.C.S.No. 153/2006. The said decree has been obtained by misleading the Court and the decree has been passed ex-parte. The present judgment debtor has filed an application to set aside the said decree and in that application, he has preferred an application for stay of this execution petition. However, on the basis of ex-parte decree, the decree holder is trying to execute decree in hurried manner. If the said decree is executed the proceeding in Civil M.A. NO.9/2017 filed before the Court will be infructuous. Hence, it is requested to allow the application and stay the present execution petition till final decision of the Civil.M.A.No. 9/2017 pending before the Civil Judge Junior Division, Pandharpur.

2 The decree holder has filed say to the said application and contested the application. It is contended that, the application filed by the judgment debtor is not maintainable and only to prolong the execution of decree, this kind of application has been filed. It is contended that, no suit with respect to setting aside ex-parte decree in

R.C.SNO.153/2006 has been filed till today or is not pending till today.

If this aspect is considered, the application does not come under the purview of Order 21 Rule 29 of the Code of Civil Procedure. Hence, it is requested to reject the application.

3 Perused the application, say filed by the decree holder. Heard learned advocate Shri. N.D. Shinde on behalf of the judgment debtor and learned advocate Shri. S.V. Parmane on behalf of the decree holder. The application has been filed under Order 21 Rule 29 of the Code of Civil Procedure. If this provision is perused, "Where a suit is pending in any Court against the holder of a decree of such Court [or of a decree which is being executed by such Court], on the part of the person against whom the decree was passed, the Court may, on such terms as to security or otherwise, as it thinks fit, stay execution of the decree until the pending suit has been decided." If this provision is considered, it is crystal clear that, the execution can be stayed only in case where the suit is pending against the decree holder. If the contentions in the application are perused, it is not the case of the applicant/judgment debtor that, suit is pending between them with respect to the subject matter of the execution petition. It is pertinent to note that, under Order 9 Rule 13 of the Code of Civil Procedure, application for setting aside ex-parte decree

can be filed. So far as provision of Order 21 Rule 29 is concerned, this provision is applicable only in case of suit. If the contents of the application is perused, in the application itself no mentioned has been made as to which kind of application is pending. Considering this aspect, in my opinion, this execution petition cannot be stayed in view of provision Order 21 Rule 29 of the Code of Civil Procedure. Application being devoid of any merit as liable to be dismissed. Hence, I proceed to pass the following order :-

**-:: ORDER ::-**

Application below Exh. No. 87 is rejected.

Date : 12.01.2018.

(S.T. Shinde),  
3<sup>rd</sup> Jt. Civil Judge Junior Division,  
Pandharpur.

**C E R T I F I C A T E**

I affirm that the contents of this PDF file Judgment/ Order is same word to word as per the original Judgment.

- a Name of the Stenographer : Shri. P.T. Jadhav
- b Court : 3<sup>rd</sup> Jt. C.J.J.D.& J.M.F.C.,  
Pandharpur.**
- c Date of Order : 12.01.2018.
- d **Order** signed by P.O. on : 16.01.2018.
- e Order uploaded on : 16.01.2018.