**Stay Application in Appeal under Order XLIII of Civil Procedure Code.**

Format of stay application to file with Appeal under order 43 of CPC.

A separate stay application can be filed to seek stay form the higher court while filing appeal under order xliii of Civil Procedure Code. As per Order XLIII of CPC an appeal shall be from the following orders under the provisions of section 104.

Sample format of Stay Application to be filed with appeal under order 43 of CPC is given below:

IN THE \_\_\_\_\_\_ COURT OF \_\_\_\_\_\_\_

 AT ----------------

CIVIL MISCELLANEOUS APPLICATION NO\_\_\_\_\_ OF 20\_\_

IN THE MATTER OF:
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_                                     .......   APPELLANT/ APPLICANT

VERSUS

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ & ORS                         .......    PLAINTIFF/ OPPOSITE PARTY

**APPLICATION UNDER SECTION 151 OF CPC FOR GRANT OF STAY**

TO,
THE HON'BLE CHIEF JUSTICE AND HIS COMPANION JUDGES OF THE HON'BLE HIGH COURT OF DELHI.

THE PETITIONERS ABOVE NAMED

MOST RESPECTFULLY SHOWETH:

1. That the opposite party No. 1 \_\_\_\_\_\_\_\_\_\_\_\_\_\_filed a suit for permanent injunction in the Court of Civil Judge,\_\_\_\_\_\_\_\_\_\_\_\_\_\_ being original Suit No\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ v. \_\_\_\_\_\_\_\_\_\_\_\_\_\_with the prayed that the respondent be restrained not to interfered in peaceful possession over the tank in dispute of an area of \_\_\_\_\_ Acres situated in plot No\_\_\_\_\_\_\_\_\_\_\_\_\_\_. Copy of Plaint is annexed herewith and as Annexure No. 1.

2. That during the pendency of the suit the opposite party No. 1 moved an application for temporary injunction. Copy of the application for Temporary injunction annexed herewith and marked as Annexure No. P2.

3. That the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Court on the application of the plaintiff opposite party No. 1 appointed a Amin Commissioner to submit its report. The Amin Commissioner submitted report before the Court below on\_\_\_\_\_\_\_\_\_\_\_\_\_\_

4. That the appellant-applicant on \_\_\_\_\_\_\_\_\_\_\_\_\_ filed the objection against the application of the plaintiff-opposite party moved for the temporary injunction. Copy of the Objection filed by the Applicant is annexed herewith and marked as Annexure P3.

5. That the case of the appellant-applicant is this that he has been granted patta on \_\_\_\_\_\_ 20\_\_ of an area \_\_\_ acres of North West portion of plot No. \_\_\_\_\_.

6. That it is State that the Amin Commissioner submitted its report before the Court below on \_\_\_\_\_\_20\_\_. The counsel for the appellant-applicant prayed for time for filing objection against the report of the Amin Commissioner submitted on \_\_\_\_\_\_\_\_\_\_\_\_\_\_ but the \_\_\_\_\_\_ Court refused to grant time and directed both the parties to argue on the said report and after hearing argument on merit reserved the judgment and pronounced the judgment on next day i.e. \_\_\_\_\_\_\_\_\_\_\_\_\_\_ It is also pertinent to mentioned here that the applicant filed his reply against the application of the plaintiff-opposite party No. 1 moved for temporary injunction on \_\_\_\_\_ 20 \_\_\_\_\_.

7. That it is stated that the court below relied upon the report of the Amin Commissioner without giving any opportunity to the applicant for filing objection against the same.

8. That the counsel for the appellant moved an application before the Court below on\_\_\_\_\_\_ 20\_\_\_\_\_\_ with the prayer that the applicant wanted to file the appeal against the order dated \_\_\_\_\_\_ and prayed that operation of the order be stayed for 15 days but the Court below rejected the application of the applicant.

9. That it is stated that the order of the Lower Court has not been given affect to so far hence it is expedient in the interest of justice that the Hon'ble Court be pleased to stay the operation of impugned so judgment and order dated \_\_\_\_\_\_ Passed in Original Suit No\_\_\_\_\_\_ granting ad interim injunction, during the pendency of this appeal before this Hon'ble Court otherwise the applicant shall suffer irreparable loss and hardship.

PRAYERS

In view of the facts & circumstances stated above, it is most respectfully prayed that this Hon'ble Court may be pleased to:-

a) allow this application and stay the operation of impugned judgment and order dated \_\_\_\_\_\_\_ passed in Original Suit No\_\_\_\_\_\_\_\_ of 20\_\_\_\_\_\_\_\_ Shri\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ v. \_\_\_\_\_\_\_\_ and others pending in the Court of Civil Judge, \_\_\_\_\_\_\_\_ during the pendency of this appeal before this Hon'ble Court;

b) Any other relief, order or direction this court may deem fit and proper under the facts and circumstances of this case.

THROUGH;

COUNSEL FOR THE PETITIONERS

New Delhi

Dated: \_\_.\_\_.20\_\_

Order XLIII of Civil Procedure Code

Rule 1 Order XLIII "Appeal from orders"

An appeal shall be from the following orders under the provisions of section 104, namely :-

(a) an order under rule 10 of Order VII returning a plaint to be presented to the proper Court except where the procedure specified in rule 10 A of Order VII has been followed;

(c) an order under rule 9 of Order IX rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit;

(d) an order under rule 13 of Order IX rejecting an application (in a case open to appeal) for an order to set aside a decree passed ex parte;

(f) an order under rule 21 of Order XI.;

(i) an order under rule 34 of Order XXI on an objection to the draft of a document or of an endorsement;

(j) an order under rule 72 or rule 92 of Order XXI setting aside or refusing to set aside a sale;

(ja) an order rejecting an application made under sub-rule (1) of rule 106 of Order XXI, provided that an order on the original application, that is to say, the application referred to in sub-rule (1) of rule 105 of that Order is appealable.

(k) an order under rule 9 of Order XXII refusing to set aside the abatement or dismissal of a suit;

(1) an order under rule 10 of Order XXII giving or refusing to give leave;

(n) an order under rule 2 of Order XXV rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit;

(na) an order under rule 5 or rule 7 of Order XXXIII rejecting an application for permission to sue as an indigent person;

(p) orders in interpleader-suits under rule 3, rule 4 or rule 6 of Order XXXV;

(q) an order under rule 2, rule 3 or rule 6 of Order XXXVIII;

(r) an order under rule 1, rule [rule 2A], rule 4 or rule 10 of Order XXXIX;

(s) an order under rule 1 or rule 4 of Order XL;

(t) an order of refusal under rule 19 of Order XLI to re-admit, or under rule 21 of Order XLI to re-hear, an appeal;

(u) an order under rule 23 or rule 23A of Order XLI remanding a case, where an appeal would lie from the decree of the Appellate court;

(w) an order under rule 4 of Order XLVII granting an application for review.

Rule 1A Order XLIII "Right to challenge non-appealable orders in appeal against decrees"

(1) Where any order is made under this Code against a party and there upon any Judgment is pronounced against such party and a decree is drawn up, such party may, in an appeal against the decree, contend that such order should not have been made and the Judgment should not have been pronounced.

(2) In an appeal against a decree passed in a suit after recording a compromise or refusing to record a compromise, it shall be open to the appellant to contest the decree on the ground that the compromise should, or should not, have been recorded.

Rule 2 Order XLIII "Procedure"

The rules of Order XLI shall apply, so far as may be, to appeals from orders