

GAHC010123712023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : I.A.(Civil)/868/2024

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM
DISPUR
GUWAHATI - 6.

2: THE COMMISSIONER AND SECRETARY
PUBLIC WORKS DEPARTMENT
GOVT. OF ASSAM
SECRETARIAT
DISPUR
GUWAHATI 06

3: THE PUBLIC WORKS DEPARTMENT
REPRESENTED BY THE CHIEF ENGINEER
PWD(ROADS) CHANDMARI
GUWAHATI 03

4: THE EXECUTIVE ENGINEER
PWD(ROADS) KARIMGANJ RURAL ROADS DIVISION
KARIMGANJ
ASSAM
VERSUS

M/S M.K AGARWALA
A PROPRIETORSHIP FIRM OF SRI MANOJ KUMAR AGARWALA. HAVING ITS
PLACE OF BUSINESS AT NEHA APARTMENT
SATI JAYMOTI ROAD
ATHGAON
GUWAHATI 01

For the Applicant(s) : Mr. D. Nath, Sr. Government Advocate

For the Respondent(s) : Mr. S. Saha, Advocate

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

Date : 20.03.2024

1. This is an application filed under Order XLI Rule 5 of the Code of Civil Procedure, 1908 for stay of the judgment and decree dated 02.03.2023 passed in Money Suit No.135/2017 by the Court of the learned Civil Judge No.2 Kamrup (M) at Guwahati.
2. This Court had duly taken note of the written statement filed by the Appellants who were the Defendants in the suit wherein it has been duly mentioned that the plaintiff was entitled to an amount of Rs.23,24,693/-. Further to that, it is also seen from the decree so passed that the learned Trial Court held that the plaintiff would be entitled to an amount of Rs.29,27,000/- against the executed and measured works, Rs. 6,00,000/- against the work but not measured and Rs.4,11,205/- against the security deposit. It has also been decreed that the plaintiff would be entitled to interest @ 8% per annum on the amount receivable from 12.07.2010 till the date of realization.
3. Mr. D. Nath, the learned Senior Government Advocate appearing on behalf of the Appellants submitted that an execution proceedings have been initiated being Money Execution Case No.17/2023 claiming an amount of Rs.1,07,16,865.49p. He therefore submitted that the execution proceedings be stayed pending disposal of the appeal.
4. After hearing both the parties, this Court is of the opinion that as the appeal has been admitted, the applicants/appellants are entitled to some

protection taking into account the huge amount of money which the appellants would have to pay if the Money Execution Case No.17/2023 is permitted to proceed pending disposal of the appeal.

5. Accordingly, this Court directs the Applicants/Appellants to deposit the principal amount as stated in the decree i.e Rs.29,27,000/- + Rs.6,00,000/- + Rs.4,11,205/- totaling to Rs.39,38,205/- before the Registry of this Court on or before 20.05.2024. It is made clear that if the said amount is not deposited, the said execution proceedings can proceed.

6. Apart from that, this Court grants the liberty to the Appellants to file appropriate application before the Registry of this Court for release of the said amount. The Registry may permit such release of the amount subject to furnishing an indemnity bond and after due verification.

7. With above observations and directions, the instant application stands disposed of.

JUDGE

Comparing Assistant