

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

CIVIL APPLICATION NO.5517 OF 2014
IN
FIRST APPEAL ST.NO.14251 OF 2014

The State of Maharashtra and
ors.

..Applicants

Versus

M/s Akash Constructions,
Aurangabad

..Respondent

Mr R.P. Phatke, A.G.P. for applicants
Mr S.R. Deshpande, Advocate for respondent

CORAM : N.W. SAMBRE, J.

DATE : 20th March 2015

PER COURT

1. By this civil application, the appellant-State Government has sought stay to the judgment and order dated 3rd December 2013 passed by the Civil Judge, Senior Division, Aurangabad in Special Civil Suit No.422 of 2004.

2. While hearing, this Court by an order dated 26th June 2014 had directed the appellant to deposit the amount under Clause D and F of the operative part of the judgment of the trial Court.

3. By an order dated 23rd September 2014, this Court has admitted the present first appeal. The time to deposit the amount was extended lastly by an order dated 6th January 2014. It is reported by the learned A.G.P. that on 23rd September 2014 the amount of Rs.7,17,381/- has been deposited and the balance amount of Rs.8 lacs

was deposited on 12th March 2015. As such, according to the appellant, the entire amount under the decree, as ordered by this Court is deposited, but for amount under Clause D and F, as stated above.

4. Learned Counsel for the respondent - decree holder has invited attention of this Court to the provisions of Order 41, Rule 1 (3) of the Code of Civil Procedure, so as to canvass that while granting stay to the money decree, this Court should first call upon the appellant-judgment debtor to deposit the entire amount. In support thereof, he has placed reliance upon the judgment of this Court in the matter of **Bhogwati Sahakari Sakhar Karkhana Ltd., Vs. M/s Chaugule and sons, reported in 2003 (2) Mh.L.J. 562.**

5. The amount as deposited herein against the decree in question is not in dispute by the learned Counsel for the respondent. In view thereof, the interim order passed by this Court and continued from time to time is confirmed.

6. The respondent - decree holder will be at liberty to move application for withdrawal of the amount deposited, which shall be considered and decided on its own merits.

7. Civil Application stands allowed in above terms.

(N.W. SAMBRE, J.)

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