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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL APPLICATION NO.1487 of 2015

IN

FIRST APPEAL NO.1390 OF 2014

WITH

CIVIL APPLICATION NO.4076 of 2014

IN

FIRST APPEAL NO.1390 OF 2014

Jagannath Krishnaji Deore ...Applicant

v/s.

M/s.Royal Enterprises and Ors. ...Respondents.

Mr.Vishal Kanade i/b Mr.Sanjay S. Gawde, for the Applicant.

Mr.Hitesh P. Vyas, for the Respondent No.1.

**CORAM: A. S. OKA &
REVATI MOHITE DERE, JJ.**

DATED : 15th JULY, 2015.

P.C.

1. Heard the learned counsel appearing for the applicant.
2. The applicant is the original Defendant No.1 in a Suit filed by the first respondent – original plaintiff. There is a money decree passed by the Trial Court in the sum of Rs.1,00,00,001/- along with interest at the

rate of 6%.

3. The submission of the learned counsel appearing for the applicant is that the first respondent – original plaintiff has not established the case pleaded in the plaint. He invited our attention to the case made out by the first respondent – original plaintiff. He stated that according to the first respondent – original plaintiff, a sum of Rs.1,00,00,001/- was paid by cheque to the applicant, as the applicant agreed to sell the suit property for a lump-sum amount of Rs.31,00,00,000/-. He pointed out that this case is not established by the first respondent – original plaintiff. He invited our attention to the issues framed by the trial Court and urged that as the first respondent – original plaintiff did not discharge the burden, there is no justification for passing the decree.

4. By ad-interim order dated 18th February, 2015 passed by this Court in Civil Application No.4076 of 2014, the ad-interim stay of execution of the impugned decree has been granted, subject to the condition of the applicant/appellant depositing 75% of the decretal amount in the trial court.

5. The learned counsel for the applicant invited our attention to the averments made in the Civil Application No.1487 of 2015 and in the additional affidavit. He pointed out that the present age of the application is 71 years and the only source of income for the applicant is the interest earned by him on the Fixed Deposits. He, therefore, submitted that stay may be granted, subject to the applicant furnishing a Bank Guarantee to the extent of 75% of the decretal amount.

6. Both the applications are opposed by the learned counsel appearing for the first respondent – original plaintiff.

7. We have perused the affidavit in lieu of examination in chief of the applicant. He has denied the transaction pleaded by the first respondent – original plaintiff. However, he has admitted the receipt of a sum of Rs.1,00,00,001/- by a cheque. His contention is that on a request made by the first respondent – original plaintiff he has spent time, money and expertise to find out a suitable proposal for development for the benefit of the first respondent or his nominee and therefore, he was entitled to the sum of Rs.1,00,00,001/-, by way of commission.

8. We have perused the cross examination of the applicant. Though he claims that he was a tax payer for the last seven to eight years and he has shown a sum of Rs.1,00,00,001/- given by the first respondent in the Books of Accounts filed along with the Income Tax Returns, admittedly the applicant did not produce copies of the Income Tax Returns. He pleaded that he will file the Income Tax Returns after consulting his Income Tax Consultant. Admittedly the copies of the Income Tax Returns were not filed. The applicant did not produce the Book of Accounts to show that an entry of Rs.1,00,00,001/- was made therein by way of Commission. He could not state before this Court whether the TDS was deducted on the Commission amount. He admitted that he has no documentary evidence to show that he has received a sum of Rs.1,00,00,001/- towards Commission.

9. Therefore, the case made out by the applicant that the amount received was by way of Commission has been dis-belived by the Trial Court.

10. Therefore, there is no reason to modify the ad-interim relief granted on 18th February, 2015. However, further time deserves to be

granted to the applicant to deposit the decretal amount. Hence, we dispose of the applications by passing the following order :-

ORDER

- i) In Civil Application No.4076 of 2014, there shall be interim relief in terms of prayer clause (a), subject to the condition of the applicant/appellant depositing 75% of the decretal amount payable as of today with the Trial Court within a period of three months from today. No further extension shall be granted ;
- ii) On failure of the applicant/appellant to deposit the requisite amount with the Trial Court, within the stipulated period, the interim stay shall stand vacated, without further reference to the Court ;
- iii) Civil Application No.1487 of 2015 stands rejected.

(REVATI MOHITE DERE,J.)

(A.S. OKA,J.)