

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

CIVIL APPLICATION NO.1422 OF 2015

IN

FIRST APPEAL (ST). NO.9382 OF 2015

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
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Mr.A.R.Patil, A.G.P for the applicant

CORAM : K.K.TATED, J.

DATED : 09/04/2015

PC:

1 Not on board. At the request of Advocate for the learned A.G.P for the applicant, matter is taken on board for urgent orders.

2 This application is preferred by defendant for stay of the operation and implementation of the judgment and decree dated 18.12.2013 passed by Joint Civil Judge, Senior Division, Ratnagiri in S.C.S. No.110 of 2010.

3 The learned A.G.P for the applicant submits that respondent plaintiff filed Execution Application No.2 of 2014 for recovery of decretal amount. He submits that next date in the said Execution Application is tomorrow i.e. 10.04.2015. He submits that if entire amount is recovered by the respondent plaintiff in Execution Application, nothing will survive in the present proceeding.

4 The learned A.G.P for the applicant submits that the Trial Court erred in coming to the conclusion that respondent plaintiff is entitled sum of Rs.17,61,950/- towards royalty amount with interest @ 9% p.a. He submits that Trial Court has not considered evidence on record at the time of passing impugned judgment and decree. He submits that they have good chance of success . He submits that if stay is not granted, irreparable loss and injury will be caused to the applicant. He submits that in the interest of Justice, this Hon'ble Court be pleased to stay the operation and implementation of the judgment and decree dated 18.12.2013 passed by Joint Civil Judge, Senior Division, Ratnagiri in S.C.S. No.110 of 2010.

5 Considering the submissions made by the learned A.G.P for the applicant, the averments made in Civil Application and after going through the impugned order dated 18.12.2013, I am satisfied that the applicant has made out a case for allowing Civil Application.

6 It is to be noted that in the present proceeding appellant is challenging the money decree. Hence, they have to deposit entire decretal amount in the Trial Court. As this order is passed without issuing notice to the respondent plaintiff, liberty granted to them to prefer appropriate application if they so desire for withdrawal of the amount and that application be decided on its own merits. Hence,

following order:

(a) Operation and and implementation of the judgment and decree dated 18.12.2013 passed by Joint Civil Judge, Senior Division, Ratnagiri in S.C.S. No.110 of 2010 (Old Suit No.238 of 2008) is stayed on condition that applicant to deposit entire decretal amount with interest and cost in the Trial Court within four weeks from today, failing which Civil Application shall stand dismissed without referring back to the court.

(b) If amount is not deposited within stipulated time as stated hereinabove, respondent plaintiff is entitled to execute the award according to law.

(c) If amount is deposited within stipulated time as stated hereinabove, Tribunal is directed to invest entire amount in fixed deposit of any nationalised bank initially for a period of one year and same be continued till the hearing and final disposal of the First Appeal.

(d) Liberty granted to the respondent plaintiff to prefer appropriate application if they so desire for withdrawal of amount and that application be decided on its own merits.

(e) Civil Application is disposed of accordingly.

(K.K.TATED, J.)