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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.5650 OF 2015
IN
SECOND APPEAL NO.185 OF 2013

Santosh Traders Prop and Owner

APPLICANT

VERSUS

Nimba Fakira Suryawanshi

RESPONDENT

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Mr. V. B. Patil, Advocate for the appellant

Mr. Chaitali Kutti h/f Mr. P. N. Kutti, Advocate for respondent

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[CORAM : SUNIL P. DESHMUKH, J.]**DATE : 23rd SEPTEMBER, 2016****ORDER :**

1. Heard learned advocate for the parties.
2. This is an application seeking withdrawal of amount deposited by the respondent.
3. Regular Civil Suit No.189 of 2004 filed by the applicant-plaintiff had been decreed for recovery of amount of Rs.1,47,053/- with interest. There was delay in filing appeal against aforesaid decree at the instance of defendant. The first appellate court had refused to condone the delay. As such, the second appeal ensued before this court. While second appeal

came to be allowed, the respondent-defendant had been directed to deposit a sum of Rs.75,000/- in the district court. Thereafter, Regular Civil Appeal came to be dismissed, against which second appeal had been preferred before this court. This court while granting interim relief had imposed a condition of deposit of Rs.50,000/- in this court. Accordingly, the amounts came to be deposited in respective court. Subsequently, the second appeal came to be dismissed.

4. Learned advocates are as such, not at logger heads that the amount of Rs.75,000/- is lying with the district court whereas the amount of Rs.50,000/- is deposited in this court and further that execution petition is pending at the instance of present applicant - plaintiff - decree holder. The decree is for recovery of amount with interest. The amount deposited by the respondent aggregates to Rs.1,25,000/-.

5. As such, amount of Rs.50,000/- which is lying in this court along with interest if any and the amount of Rs.75,000/- lying with district court, along with interest if any, be remitted to the court of Civil Judge, Junior Division, Chalisgaon before which Regular Darkast No.39 of 2012 is pending.

6. Having regard to aforesaid, the applicant be allowed to withdraw the amount of Rs.1,25,000/- along with interest as would be transmitted to the executing court. For rest of the decretal amount, if any, under the decree, execution may proceed with.

7. Civil application as such, stands granted in aforesaid terms and stands disposed of.

[SUNIL P. DESHMUKH, J.]