

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

WRIT PETITION NO. 5082 OF 2014

Shri Kedarnath Sugar and Agro Products Ltd.,
Office at / Hotel victor Palace,
Rukmini Nagar, Old Pune Banglore Rd.,
Kolhapur – 416 005.

... Petitioner

v/s

Sai Infotech Education Sales Services
Pvt. Ltd., Office at 322, 34th floor,
East Wing, Aurora Towar, M.G.Road,
Camp, Pune – 411 001.

... Respondent

Mr.S.S. Patwardhan along with Ajay Magdum for the petitioner.
Mr.Shashank Mangale for the respondent.

Coram: N.M. Jamdar, J.
Dated: 6 October 2016

ORAL ORDER:

Heard learned counsel for the parties. Taken for final disposal forthwith by consent of parties.

2 The Petitioner has challenged the orders dated 21 March 2014 and 22 January 2014, in Summary Suit No.12 of 2010. By an order dated 22 January 2014, the application filed by the Respondent/Plaintiff was allowed and the Respondent/Plaintiff was permitted to withdraw certain amount deposited by the Petitioner by furnishing a bank guarantee. Thereafter, applications were taken out by the

Petitioner to impose conditions as regard the withdrawal sought by the Respondent/Plaintiff. The learned Civil Judge, by the impugned order dated 21 March 2014 permitted the Respondent/Plaintiff to withdraw the amount deposited on furnishing bank guarantee. An objection was taken by the Petitioner to accept the bank guarantee on the ground that it is for three months, and which was overruled by the learned Judge holding that the bank has accepted the liability and, therefore, the bank guarantee of limited duration is good enough compliance and security.

3 When the petition appeared on board on the earlier date, learned counsel for the Respondent has sought time to take instructions and to make the position clear regarding keeping the bank guarantee alive. An affidavit has been tendered by the learned counsel for the Respondent affirmed on 3 October 2016, in which a statement has been made that the bank guarantee will be kept alive till further orders to be passed by the learned Civil Judge. It is stated on oath that the bank guarantee has been now renewed and will remain in force till 27 September 2017. Needless to state that, if the proceedings do not get over before the next date and it is necessary to keep the bank guarantee alive, the Respondent will do so. Learned counsel for the Petitioner states that, as far as this statement on an affidavit and subsequent renewal of the bank guarantee, the Petitioner has no grievance left.

4 Learned counsel for the Petitioner however submitted that, neither in the affidavit or bank guarantee, there is any provision regarding the amount of interest which may be availed of by the Respondent on the amount so withdrawn. Learned counsel for the Respondent submits that, while permitting withdrawal of the amount, no condition regarding interest has been imposed.

5 Since an affidavit has now been filed in this petition which has changed the complexion of the controversy between the parties and that the question of how to secure the interest has not been adverted by the learned Civil Judge, it will be appropriate that the application below Exh.59, so far as it relates to securing the amount of interest, will have to be restored to the file, to be considered on its own merits by the learned Civil Judge.

6 Accordingly, the writ petition is disposed of by restoring the application filed by the Petitioner below Exh.59. The learned Civil Judge will take into account an affidavit filed by the Respondent in this petition and consider the grievance of the Petitioner regarding securing the interest and pass an appropriate orders, after hearing both sides.

7 The writ petition is disposed of in above terms.

(N. M. Jamdar, J.)