IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1322 OF 2016
WITH
CIVIL APLICATION NO. 3715 OF 2016
IN
FIRST APPEAL NO. 1322 OF 2016

1. Indian Counter Equity Dealer
   a proprietory firm carrying on business
   at 303/2, Ivory Tower,
   Juhu Koliwada Beach, Santacruz (W),
   Mumbai – 400 049

2. Shobhana Dalal (Neee)
   Shobhana R. Thakkar, Age 57,
   Occu. Business, Proprietress of
   Defendant No.1, residing at 303/2,
   Ivory Tower, Juhu Koliwada Beach,
   Santacruz (W), Mumbai-400 049

3. Nikhil Dalal
   Age 62, Occu.Business,
   Husband of Defendant No.2 and
   President of Defendant No.1 residing at
   303/2, Ivory Tower, Juhu Koliwada
   Beach, Santacruz (W), **Appellants**
   Mumbai-400 049 **(Org. Defendants)**

Versus

Shehnaz Sani
previously known as
Shehnaz Mudbhatkal
Age 51, Occu. Service, residing at
A/702, Milton Apartments, Azad Road,
Juhu Koliwada, Santacruz (W), **Respondent**
Mumbai-400 049. **(Org. Plaintiff)**

Appearances :-

For Appellants	Mr.Ranjeev Carvalho with Mr.Sushant Yadav & Ms.Disha Ramchandani i/b. M/s.K.Ashar & Co.
For Respondent	Ms.Shehnaz Sani, Respondent-in-person.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 27TH OCTOBER, 2016.

<u>ORAL JUDGMENT :</u>

1] This appeal is preferred by the original defendants challenging the money decree dated 4th July, 2016 passed by the City Civil Court, Mumbai in Summary Suit No.6980 of 2004.

2] Brief facts of the appeal can be stated as follows;

Appellant No.1 herein is a proprietary concern registered with Over-the-Counter Exchange of India (**OTCEI**), the Appellant No.2 is the proprietress of the Appellant No.1, whereas Appellant No.3 is the husband of Appellant No.2 and also the President/Manager of Appellant No.1. The Appellant No.1 was dealing as Sub-Broker and Dealer of National Stock Exchange as well as Authorized Dealer of OTCEI.

3] It is the case of the Respondent that she has deposited a sum of Rs.3,50,000/- by cheques, by way of investment, with guarantee of return at the rate of 2% per month, thereof. The Appellants used to make the payment on quarterly basis as and by way of return/interest on the said amount. The Respondent was thus having option/choice to renew the said deposit and/or withdraw the deposit on expiry of every quarter. The Appellant No.1 had accordingly, issued three receipts. The Appellant No.3 had signed on the said receipts as President of Appellant No.1. The said receipts mentioned the interest/ return at the rate of 2% per month and also the maturity dates of the deposits. As per the case of the Respondent, the Appellants had assured her that they will return the amount deposited, to the Respondent by notice period of two days only. Accordingly, the Respondent was paid the interest / return on the said deposit amount for seven quarters. Thereafter, the deposit amount of Rs.1,50,000/- was returned to the Respondent in three installments of Rs.50,000/-

each on 4th June 2001, 11th June 2001 and 21st June 2001.

4] It is the case of the Respondent that thereafter, vide her letter dated 22nd June, 2001 addressed to Appellant No.3, she demanded balance amount of Rs.2,00,000/- alongwith interest accrued thereon. The Appellants, however, vide reply dated 27th June, 2001 assured that the said deposit amount of Rs.1,00,000/- will be paid over by two installments of Rs.50,000/- each in July 2001 and to liquidate the deposit amount of Rs.1,00,000/- deposited on 30th November, 1999 and further assured that the other amount of Rs.1,00,000/- deposited on 22nd December, 1999 would be paid over in August 2001 by means of two payments of Rs.50,000/- each.

5] However, as the Appellants failed to pay the said amount as assured, the Respondent sent a notice dated 3rd July, 2001 requesting and demanding the balance payment of Rs.2,00,000/- together with interest accrued thereon, with additional interest of Rs.2800/- being the interest on unpaid amount of the previous deposit of Rs.1,50,000/-. As the Appellants neglected to pay the said amount, the Respondent, by her letter dated 8th August, 2001 lodged a complaint in writing with Police and also with Securities Exchange

Board of India (SEBI). The Senior Inspector of Police, Economic Offence Wing, Crime Branch, C.I.D., Mumbai by his reply dated 14th August, 2001 informed the Respondent that as the amount involved was less than Rs.25,00,000/-, the complaint of the Respondent was sent to the local Santacruz Police Station, Mumbai for necessary action. The Appellant No.3 was then summoned to the said Police Station on 14th September, 2001 and according to the Respondent, the Appellant No.3 promised that the amount will be repaid on 30th November, 2001 and 22nd December, 2001. The Respondent, therefore, by her letter dated 21st September, 2001 reminded him of his assurance to pay the amount. However, the Appellants failed to return/repay the said amount and raised false contentions. The Respondent was, therefore, after a series of exchange of letters and telephonic talks, constrained to file the suit being Summary Suit No. 6980 of 2004 before the City Civil Court, Mumbai, seeking the amount of Rs.3,44,000/- together with further interest at the contractual rate of 24% per month on the principal sum of Rs.2,00,000/- from the date of filing of the suit till realization of the amount.

6] The suit came to be initially decided *ex-parte* on 28th February 2013. In the appeal preferred by the Appellants, the said *ex-parte* decree, was set aside by this Court on 28th February 2013, and the Appellants were given an opportunity to contest the suit.

7] Thereafter, Appellant Nos.1 and 2 resisted the suit by filing their written statement contending *inter-alia* that this money transaction relates to a high risk/high return (2% per month) investment of Rs.3,50,000/-. The investment of the said amount was not denied but it was submitted that the investment was on fixed return basis, wherein original defendant-Appellant No.1 would absorb the market trading profits and/or losses. It is submitted that the said investment was not/cannot be a “loan” on 24% perennial “interest” as claimed by the Respondent. As per the Appellants, the financial instrument under which the said “investment” was made, was known as Vyaz Badla Receipts (VBR), which had a fixed quarterly renewal due dates. It was never liquidated prematurely. It is submitted that this delivery less traditional Vyaj Badla System of trading was officially abolished around June 2001after D-mat script and computerization was implemented. However, the on-line forward trading continued as

"Venture Deposit Receipts" (VDR) and in other forms involving investment as margin money. According to the Appellants, in case of high risk and high return investments premature withdrawal was strictly conditional. In case of premature withdrawal by the investor, he or she would be entitled only to the extent of Net Asset Value (NAV) amount, which may be either positive or negative as on the cut-off date. It is urged that in case of Vyaj Badla Receipts or Venture Deposit Receipts, wherein the amount is invested in permissible Badla business, if on the cut off date the market index was low then the person has to suffer the consequences. It is urged that when the Respondent chose to prematurely withdraw the amount of the deposit, the market conditions were very low and as a result thereof, the Respondent was entitled to get only the amount which she has invested.

8] Secondly, it is submitted that as on the cut off date i.e. 26th June, 2001, the Net Asset Value depreciation of 25% inclusive of service charges was debited to the amount of the Respondent in the form of three debit notes, the aggregate amount was of Rs.87,500/-.

9] Even as regards the amount, which she has invested, it has been submitted that the Respondent was liable for statutory debit in respect of Tax Deducted at Source (TDS) chargeable to her for the already earned interest. Thus according to the Appellants, the claim made by the Respondent was exorbitant and hence, the Respondent is not entitled to the money decree as claimed by her.

10] Appellant No.3 who was joined subsequently in the suit by way of an amendment in the plaint has resisted the suit contending *inter-alia* that he is merely employed in capacity as a Manager or President of Appellant No.1, hence he cannot be saddled personally with any liability.

11] On these respective pleadings of the parties the trial Court was pleased to frame necessary issues at Exh.14. In support of her claim the Respondent examined herself and proved the various documents on record, especially the receipts. On behalf of the Appellants, Appellant No.3 laid the oral evidence and he was cross-examined by the Respondent-in-person.

12] In the light of this oral and documentary evidence produced on record by both the parties, the trial Court was pleased to decree the suit by answering all the issues framed for its determination in favour of the Respondent. The trial Court held that the transactions in question were the Vyaj Badla Receipts and not the Venture Deposit Receipts. The trial Court held that as the execution of Vyaj Badla Receipts Exh.17 to 19 is not disputed by the Appellants, the Respondent is entitled for return of the said amount. As regards, the subsequent receipts Exh.36 to 38 on which the Appellants had placed reliance, the trial Court found that those receipts are not genuine, as the signature of Appellant No.3 was found to be missing on the xerox copies of the receipts Exh.36 to 38 which were produced by the Appellants at the time of filing of the suit and the signatures were found to be appearing on the xerox copies of the receipts which were produced subsequently. The trial Court also found that the Appellants have no right to deduct any amount towards TDS as Appellants failed to prove the genuineness of the Venture Deposit Receipts Exh.36 to 38. The trial Court further held that Appellant No.3 cannot escape from the liability as he has signed the receipts Exh.17 to 19 as a President of the Proprietory Firm of Appellant No.1. The contention raised by the Appellants that the Civil Court has no jurisdiction to entertain the suit, as the SEBI alone has such exclusive jurisdiction, in view of Section 11(AA) and 15(Y) of the SEBI Act was also rejected by the trial Court, holding that it was a private transaction and not a collective investment scheme declared by companies, as contemplated by Section 11(AA) of the SEBI Act.

13] Thus, trial Court decreed the Suit in favour of the Respondent for total amount of Rs.3,44,000/- with interest at the rate of 24% per annum on the principal amount of Rs.2,00,000/- from the date till realization of the amount.

14] This judgment of the trial Court is challenged in this appeal, by the learned counsel for the Appellants, firstly, on the count of that the trial Court, which is a Civil Court, has no jurisdiction to entertain the suit as dispute is covered under the provisions of the SEBI Act. In this respect, the learned counsel for the Appellants has relied upon the fact that the Respondent herself has stated in plaint and also admitted in cross-examination that Appellant No.1 is registered with OTCEI. It is urged that OTCEI was founded in 1990 under the Companies Act, 1956 as a stock exchange. It is supervised and regulated by Securities and Exchange Board of India (SEBI) under the provisions of the SEBI Act, 1992. According to the learned counsel for the Appellants, Vyaj Badla Scheme is a financial mechanism, where an investor's money is deployed in financing carry-forward deals in permissible securities scheme of the Bombay Stock Exchange as permitted by SEBI. It is urged that Respondent has also admitted in her cross-examination not only the fact that Appellant no.1 was registered with OTECI but also admitted that working of Appellant no.1 was regulated by SEBI. It is further submitted that the transactions on which the Respondent is relying upon were changed in nomenclature from Vyaj Badla Receipts to Venture Deposit Receipts and are pertaining to investment in permissible securities. Respondent herself has, when the amount claimed by her was not repaid by the Appellants, approached to the SEBI, by filing the complaint. As claimed by her, she has lodged a complaint with the Senior Inspector of Police, Economic Offence Wing, Crime Branch, C.I.D., Mumbai and also to the SEBI. It is urged that she did not pursue or prosecute the complaint filed before the SEBI, whereas Economic Wing of Police Department had not taken cognizance of her complaint. In view thereof, it is urged that the suit is barred by law because the jurisdiction of the Civil Court under the provisions of Sections 15(Y), 20(A) and 21 of the SEBI Act, 1992 cannot be invoked. To advance this submission, the learned counsel for the Appellants has relied upon provisions of these sections of the SEBI Act, 1992 which read as follows;

> *"**15(Y). Civil Court not to have jurisdiction** - No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an adjudicating officer appointed under this Act or a Securities Appellate Tribunal constituted under this Act is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.*
>
> ***20(A). Bar of jurisdiction** - No order passed by the [Board or the adjudicating officer] under this Act shall be appealable except as provided in [section 15T or section 20] and no Civil Court shall have jurisdiction in respect of any matter which the [Board or the adjudicating officer] is empowered by, or under, this Act to pass any order and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any order passed by the [Board or the adjudicating officer] by, or under, this Act."*
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> *"**21. Savings** - Nothing in this Act shall exempt any person from any suit or other proceedings which might, apart from this Act, be brought against him."*

15] The learned counsel for the Appellants has in this context also relied upon Section 22(E) of the Securities Contracts (Regulation) Act, 1956 which reads as follows;

> ***"22(E).Civil Court not to have jurisdiction****- No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Securities Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act".*

16] It is submitted by the learned counsel for the Appellants that the SEBI Act, 1992 is a complete statutory Code, which provides the Board with the same powers as those vested in a Civil Court under the Code of Civil Procedure, 1908. He has drawn attention of this Court to Section 11, 11(A) to 11(D) of the SEBI Act, 1992. According to learned Counsel for the Appellants, once it is held that the SEBI Act, 1992 is a complete statutory code in itself, it has to follow that the jurisdiction of the Civil Court is not only expressly but also impliedly barred to entertain the suit. In this case, the investment in permissible securities are monitored, regulated and governed by the

SEBI Act, 1992. It is urged that if the Respondent had any grievance that SEBI has not taken cognizance of her complaint, then the remedy was available to her to file an appeal before the Securities Appellate Tribunal. However, so far as the Civil Court is concerned, according to learned Counsel for the Appellants it cannot be said to be having any jurisdiction to entertain the suit.

17] In this respect, the learned counsel for the Appellants has also placed reliance on the judgment of this Court in the case of ***Kesha Appliances Pvt. Ltd. & Ors. Vs. Royal Holdings Services Ltd. & Ors.***[1]. However, as rightly pointed by the Respondent, who has argued her case in person, that too, very effectively, the facts of this authority are totally different from the facts of the present case. As observed in the said authority in paragraph 5, the suit was filed by Plaintiff for cancellation of various allotment of shares in the 7th Defendant Company and subsequent transfer thereof and also further allotment of the shares as in violation of the SEBI Act and the Takeover Regulations which are popularly regulations known as the “Takeover Code”. The Appellants therein, had also sought the cancellation of the said allotments as well as rectification of the said

1 (2006) 1 Bom. CR 545

register on such cancellation of various allotments. Thus, the issue raised therein was totally different. It pertained to the cancellation of various allotments of shares on the count that allotment was against or in violation of the provisions of the SEBI Act and the "Takeover Code". In the light of the same, it was held that the dispute is squarely covered under the SEBI Act, 1992 and therefore, the jurisdiction of the Civil Court is barred.

18] As against it, in the instant case, one can see, even on the face of it, that the investment made by the Respondent with the Appellants was a private investment and not under the collective investment scheme. The provisions of the SEBI Act are very clear to that effect. In case of private investment scheme under the Vyaj Badla Receipts, it cannot be said that the SEBI alone has the exclusive jurisdiction. At-least, it cannot be said that the Civil Court has no jurisdiction to entertain the suit. In this respect, one may safely place reliance on the judgment of this Court in the case of ***Syntrex Corporation vs. Rajkumar Keshardev and Anr.***[2]**,** which is cited by the Respondent. In this reported case also, the dispute was relating to the return of amount of investment made in "Vyaj Badla

2 2007(6) MHLJ 34

Transactions”, which were not repaid. In this context, the learned Single Judge of this Court has held that the transactions being in the nature of the Vyaj Badla Transactions, they fell outside the jurisdiction of the Arbitral Tribunal under the bye-laws of the BSE. The learned Single Judge therefore dismissed the application. When this order was challenged before the Appellate Court Bench, it was held that, private transactions between a member and non-member of the BSE cannot be governed by the bye-laws of the Exchange. It was further held that as the disputed Vyaj Badla Transactions were held to be private transactions relating to the private dealings between the Appellant and the Respondent and not the transactions in respect of the dealings in the securities on the Exchange, no Arbitration proceedings in accordance with the rules and bye-laws of the BSE could therefore be held in respect of these transactions.

19] Here, in the case also admittedly, the transactions are between a non-member like Respondent and the Appellants, who may be the member of the SEBI and they are the private transactions and secondly, they are not under the collective securities scheme. Therefore, this contention raised by the Appellants that the trial Court has no jurisdiction to entertain the suit, it being a Civil Court and its jurisdiction being barred under the provisions of the SEBI Act, cannot be accepted. It has to be held that the trial Court has definitely jurisdiction to entertain the suit.

20] Now coming to the merits of the claim, it is pertinent to note that the Appellants are not disputing the transactions. They are also not disputing that Respondent has invested initially the amount of Rs.3,50,000/-, out of which Rs.1,50,000/- was returned with interest and Rs.2,00,000/- remained to be re-paid. They are also not disputing the issuance of the initial Vyaj Badla Receipts. The only contention raised by the Appellants is that subsequently, those Vyaj Badla Receipts were converted with the consent of the Respondent into the Venture Deposit Receipts, as the scheme of Vyaj Badla came to be abolished. It is their further contention that, under the scheme of Venture Deposit Receipts, the Respondent becomes entitled only to prevailing Net Asset Value as on the cut-off date. It is contended that, as the Respondent sought pre-mature release of deposit receipts and as on that day the market was low, she could be entitled only to the amount of Rs.87,900/-. However, she has made exorbitant claim to unjustly enrich herself and trial court has committed an error in allowing that claim.

21] However in my considered opinion, as rightly held by the trial Court, this contention of the Appellants is absolutely without any merits and falsified on the basis of the documents which are produced not only by the Respondent but by the Appellants themselves also. The Respondent, who, has conducted this entire appeal in-person, has very ably and elaborately pointed out as to how the receipts on which the Appellants are placing reliance are not the genuine one but on the face of itself, it can be seen that those receipts are prepared subsequently, just to deny the claim of the Respondent. The original Vyaj Badla Receipts are produced on record in this case at Exh.17 to 19 and as stated above the Appellants have admitted those receipts. As per the Appellants, they had given Venture Deposit Receipts Exh.36 to 38 to the Respondent. However, as admitted by them, these receipts do not bear the acknowledgment of the Respondent and hence, it becomes difficult to accept that the Respondent has consented for changing Vyaj Badla Receipts into Venture Deposit Receipts. Moreover, as observed by the trial Court, the receipts Exh.36 to 38 seem to be prepared by the Appellants after filing of the suit. This inference can be drawn from the fact that the xerox copies of these receipts which are produced on record at the time of filing written statement on 15th January, 2016, show that these receipts do not bear the signature of Appellant no.3, when these were marked as true copies before the Notary. However, when their office copies came to be filed on 26th April, 2016 in the Court, they bear the signature of Appellant no.3. Now the moot question for consideration is when the signature of Appellant no.3 was not there when these receipts were produced before the Notary, how on the receipts produced, subsequently signature of Appellant No.3 is appearing is not at all clarified by the Appellants. Conversely, in the Appeal Memo, as pointed out by the Respondent, it is stated that "Appellant no.3 had been a diabetic patient since the last 40 years which had affected his fingers and feet due to neuropathy and the same had created progressive deterioration of sensation of Appellant no.3's fingertips which prejudiced his writing ability". It is significant to note that the signature of Appellant No.3 appearing in the original receipts issued to the Respondent and produced at Exh. 17 to 19, if compared with his signature on the receipts produced at Exh.36 to

38, considered in the light of his contention that on account of "progressive deterioration", there is change in signature, is conclusive proof of the fact that these bogus documents are prepared very recently and back dated to the year 2000-2001, just to explain the difference between the signature. It is clear that Appellant no.3 and at his instance Appellant nos.1 and 2 are going to any extent to deny their liability.

22] In this respect, the cross examination of Appellant no.3 is also very relevant. He has admitted that in the original Vyaj Badla Receipts there was no mention of Note no.2 viz. "the final appreciation/deprecation of the Assets Value (Net) under this Venture Deposit Receipts to the account of depositor". He has also deposed that no one has authorized him to make such change and he has done so, only because there was statutory requirement. However, in his further cross examination he has admitted that he has not obtained the written consent and approval of the Respondent to alter or change the terms and conditions of her original "Vyaj Badla Receipts" into this "Venture Deposit Receipts". Though, he has contended that it was an oral consent, it becomes difficult to accept the same, especially when the transactions are commercial and no one can change the terms and conditions of such transactions on the basis of alleged oral consent.

23] It is also further pertinent to note that as regards the documents produced at Exh. 36 to 38, he has stated that he has delivered these documents to the Respondent, however he has not produced any documentary evidence to that effect. What is most surprising to note is that when he has sent notice reply dated 27th June, 2001, there is not a single whisper or murmur to the effect that the original “Vyaj Badla Receipts” are being replaced with “Venture Deposit Receipts”.

24] This entire oral and documentary evidence therefore makes it abundantly clear that totally an after thought defence is put up by the Appellants, only with a view to deprive the Respondent of her lawful claim towards the amount and to back up the said defence, some documents are created subsequently, which are on the face of it are not found to be true and genuine.

25] The Respondent has thus clearly established her case that what the Appellants have done is totally against law, against the original receipts, against terms and conditions and hence, the Appellants cannot escape from the liability of repaying the amount.

26] As regards the contention of the Appellants that Tax Deducted at Source (TDS) was necessary to be deducted on the amount paid to her, in this respect also the Respondent has rightly stated that TDS has to be deducted at source itself and not subsequent to payment of the amount. This contention of Appellants is therefore also devoid of merits.

27] It is also pertinent to note that Appellant no.2 has not examined herself on behalf of the Appellant nos.1 and 2, they had led the evidence of Appellant no.3, who, is calling himself merely to be an employee, though, in all the documentary evidence his name is appearing as "President/Manager" of Appellant no.1. The learned counsel for the Respondent has, in this respect relied upon the decision of the Apex Court in the case of ***Janki Vashdeo Bhojwani & anr.vs. Indusind Bank Ltd. & ors.***[3]**,** which clearly held that the Power of Attorney holder cannot depose for the principal for the acts done by the principal and not by him. Here, in the case, Appellant no.3 is

3 (2004) 3 SCC 584

contending *inter-alia* that he is not personally liable but he has given evidence on behalf of Appellant nos.1 and 2 as constituted Power of Attorney holder of Appellant no.2. It was necessary for Appellant No. 2 to enter into witness box for giving evidence before the Court, as she is supposed to be in the real know and how of all the facts. It was for Appellant No. 2 to depose that the real nature of transactions was only that of “Venture Deposit Receipts” and not “Vyaj Badla Receipts”. It was for Appellant no.2 to come before the Court and to said so. As being the Proprietress of Appellant no.1, these facts were to be in her personal knowledge. Appellant no.3, who, claims that he was merely an employee, cannot give evidence to that effect, unless as claimed by the Respondent, he was a President and Manager and therefore, he was also having full liability to repay all the said amount.

28] Lastly, coming to the aspect of the interest, according to the learned counsel for the Appellants, the interest rate charged by the Respondent and granted by the trial Court is exorbitant. However, in this respect also, the evidence on record shows that in the receipts which were “Vyaj Badla Receipts”, there is clear mention that the interest will be payable at 2% per month. It being a transaction between the parties and there being an agreement, under Section 34 of the Code of Civil Procedure, 1908, the interest rate has to be, as per the agreement.

29] The Respondent-in-person has in this respect also placed reliance on the order passed by this Court on 9th September, 2008 in Notice of Motion No. 3901 of 2007 in Summary Suit No.2739 of 2002, ***Sushil Kumar Arora & Anr. vs. Indian Counter Equity Dealer & ors.*** (Appellants herein), wherein also in respect of similar transaction of investment, this Court has awarded the interest at the agreed rate of 24% per annum, even at the stage before the defence was permitted to enter into. The Respondent-in-person has also relied upon the judgment of this Court in Summary Suit No. 2403 of 1999, ***Jayantilal D. Doshi vs. Bharat Hiralal,*** dated 24th September, 2009 wherein also in respect of the similar nature of Vyaj Badla Transactions, this Court has awarded the interest at the agreed rate.

30] Hence, I do not find any reason to differ from the order passed by the trial Court, in this respect of granting the interest, at the agreed rate of 24% per annum.

31] The net result therefore is that the appeal holds absolutely no merits and deserves to be dismissed in toto with costs and also the compensatory costs of Rs.3,000/-, considering totally false defence advanced by the Appellants to challenge the genuine case of the Respondent and that too for such a paltry sum of Rs.2,00,000/-. The appeal therefore, stands dismissed with compensatory costs of Rs.3,000/-.

32] In view of the disposal of the appeal, nothing survives in the Civil Application and the same also stands disposed of.

33] At this stage, the learned counsel for the Appellants seeks stay to the order and to the withdrawal of the amount, which is already deposited by the Appellants in the trial Court. It is submitted that the Appellants would like to explore the possibility of approaching the Hon'ble Apex Court against the judgment and order of this Court and hence, stay be granted to the withdrawal of the amount by the Respondent. The Respondent resisted the request by submitting that she is ready to furnish the “Bank Guarantee” for withdrawal of the amount but no stay be granted.

34] Only in the interest of justice, considering the submission that Appellant no.3 is bedridden and hospitalized, the stay is granted to the withdrawal of the amount by the Respondent, which is deposited in the trial Court, for a period of four weeks, as a last chance.

(DR.SHALINI PHANSALKAR-JOSHI, J.)