

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

**CIVIL APPLICATION NO.3871 OF 2016**  
**IN**  
**FIRST APPEAL (STAMP) NO.23364 OF 2016**

Air India, Mumbai ..... Applicant  
V/s.  
Videocon International Ltd., Mumbai & Anr. .... Respondents

Dr. Abhinav Chandrachud, a/w. Ms. Radha Bhandari, i/by Mr. Mittal Parekh, for the Applicant.

Mr. K.R. Bulchandani, a/w. Mr. Amit D. Nikam, for Respondent No.1.

**CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.**

**DATE : 1<sup>ST</sup> SEPTEMBER 2016.**

**P.C. :**

1. Heard learned counsel for the applicant and respondent No.1.
2. This is an application seeking stay to the effect, operation, implementation and execution of the impugned Judgment and Order dated 24<sup>th</sup> November 2015 passed by the City Civil Court, Mumbai in B.C.C.C. Suit No.8857 of 1993. As per the said Decree, Original Defendant Nos.1 and 2, jointly and severally, were directed to pay the sum of Rs.15,01,339/- to the Plaintiff along with interest @ 6% p.a. from the date of filing of the suit till payment and/or realization of the decretal amount.

3. This being a money decree, unless and until the applicant-appellant herein, who is Original Defendant No.1, deposits the entire decretal amount, as directed by the Trial Court, as a matter of fact, stay to the execution of the Decree cannot be granted; especially, considering that the execution application is already filed and even the warrant of attachment of the property of the applicant is also executed.

4. The only submission advanced by learned counsel for the applicant is that, as the liability of the present applicant and Original Defendant No.2 is joint and several, the applicant may be permitted to deposit only 50% of the amount. Secondly it is submitted that, the applicant may be permitted only to deposit the principal sum of Rs.15,01,339/- and not the interest, because, if the amount is calculated with interest, then, it may come upto Rs.40,00,000/-.

5. However, as rightly submitted by learned counsel for respondent No.1, the applicant has to deposit entire decretal amount, which necessarily includes the interest, which is also at the minimal rate of 6% p.a. and that too only from the date of filing of the Suit. Without deposit of such amount, it is needless to say that, the execution proceedings cannot

be stayed.

6. As regards the contention that Original Defendant No.2 is also jointly and severally liable to pay the amount and hence the applicant may be permitted only to deposit 50% of the amount, such submission also cannot be accepted for the simple reason that Original Defendant No.2 is not seeking any stay to the execution of the Trial Court's Decree. At-least such application is not placed before this Court today. Apart from that, the liability being joint and several, the present applicant can always recover the said amount from Original Defendant No.2.

7. In view thereof, this Civil Application is allowed and stay is granted to the execution of the impugned Judgment and Decree of the Trial Court, subject to the applicant depositing entire decretal amount, along with interest, in the Trial Court within a period of eight weeks from the date of this order.

8. On failure of the applicant to deposit the aforesaid amount within the stipulated time, the stay granted to the execution of the impugned Judgment and Decree will stand automatically vacated.

9. On the applicant depositing the aforesaid amount in the Trial Court within the stipulated time, the Trial Court is directed to invest the said amount in any Nationalized Bank, initially for a period of one year, to be renewed from time to time, till disposal of the First Appeal.

10. Liberty is, however, granted to respondent No.1 to apply for withdrawal of the said amount.

11. First Appeal (Stamp) No.23364 of 2016 to be placed for admission after eight weeks i.e. on 27<sup>th</sup> September 2016.

12. First Appeal (Stamp) No.23364 of 2016 to be heard along with First Appeal (Stamp) No.3229 of 2016.

**[DR. SHALINI PHANSALKAR-JOSHI, J.]**