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

*WRIT PETITION NO. 12570 OF 2015
with
CIVIL APPLICATION NO. 1567 OF 2016*

Vijayrao Kondiram Boraoke.

... Petitioner.

V/s.

Shree Ganesh Feed Industries & Ors.

... Respondents.

Mr. V.S. Talkute for the Petitioner.

Mr. A.B. Tajane for the Respondent No.1 and Applicant in CAW
1567/16.

CORAM : N.M. Jamdar, J.

29 September, 2016.

Oral Order :-

The Writ Petition is filed by the Petitioner challenging the order passed by the learned Civil Judge, Junior Division, Phaltan dated 13 October 2015 below Exhibits 119, 140, 141 and 143 in Darkhast No.28 of 2012.

2. The Respondent instituted a Suit bearing No. 201 of 1997 for recovery of amount of Rs.3,95,628/- on 19 September

2005. The suit was decreed on 4 April 2006. Respondent No.1 filed a Darkhast. The Petitioner appeared in the Darkhast and filed his say. A Regular Civil Appeal bearing No. 111 of 2016 was filed by the Petitioner in the District Court, Satara alongwith an application for condonation of delay of 10 years. An application for stay of the execution of the decree has been moved, however there is no interim stay granted in the appeal in favour of the Petitioner as on date. In the meanwhile, the Darkhast proceedings have gone on and by the impugned order the learned Civil Judge has directed issuance of arrest warrant under Order 21 Rule 38 of the Code of Civil Procedure against the Petitioner and therefore, the Petitioner has approached this Court by way of Writ Petition.

3. By order dated 16 December 2015, the Petitioner was put to terms of deposit of an amount of Rs.3,00,000/- within three weeks and thereafter, an amount of Rs.2,00,000/- within six weeks over and above amount of Rs.1,00,000/- already deposited. In this order it is recorded, when the Darkhast was presented in the year 2006, the amount due was Rs.10,14,185/-. As against this, it is informed that pursuant to the order dated 16 December 2015, amount of Rs.6,00,000/- in total has been deposited.

4. Considering the time span of this litigation, the learned Civil Judge cannot be said to be unjustified in issuing the arrest

warrant, in view of the fact that there is no stay by the Appellate Court and the decree is passed a decade ago.

5. The learned Counsel for the Petitioner on instructions of the Petitioner who is present as per the directions, submitted that the Petitioner will deposit an amount of Rs.1,00,000/- within period of two weeks from today. He undertakes, on instructions that thereafter, the Petitioner will pay an amount of Rs.1,00,000/- each month, that would be in the month of October, November and December, 2016. This statement made by the learned Counsel for the Petitioner on instructions is accepted.

6. The amount will be deposited in the District Court at Satara. The learned Counsel for the parties will remain present in the District Court, Satara on 17 October 2016 where the application for stay filed by the Petitioner would be considered. The learned District Judge will take note of the deposits that have been made by the Petitioner pursuant to the orders passed in this Petition and on his own accord earlier and decide the Civil Appeal on its own merits. In case the learned Civil Judge decides to hear the Appeal on merits, the learned District Judge will consider the prayer made by the Respondent, who has taken out a Civil Application, for withdrawal of the amount on such terms and conditions as the learned District Judge thinks fit.

7. In view of the undertaking of the learned Counsel for the Petitioner given on instructions, at present it is not necessary to execute the arrest warrant against the Petitioner. In case of failure of the Petitioner to honor the undertaking given to this Court, it will be open to the Respondent to move the learned executing Court for appropriate orders.

8. The Writ Petition is disposed of in the above terms. The Civil Application disposed of accordingly.

(N.M. Jamdar, J.)