

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**NOTICE OF MOTION NO.1353 OF 2016
IN
SUIT NO.445 OF 2002**

Tax Recovery Officer-17 (12(3))Applicant/deft. no.3

IN THE MATTER BETWEEN :

M/s.Mangla Homes Pvt. Ltd.Plaintiffs

V/s.

The Union of India & Ors.Defendants

Mr.Mayur Khandeparkar i/by Shah Legal for plaintiffs.

Mr.P.C.Chhotaray for the applicant.

CORAM : K.R.SHRIRAM,J

DATE : 10.6.2016

P.C.:-

1 Prayer clause-(a) of this Notice of Motion reads as under :-

“(a) Extension of stay against the releasing the balance amount of Rs.1,90,50,000/- to the plaintiff M/s.Mangla Homes Pvt. Ltd. by Hon'ble Prothonotary and Senior Master, Bombay High Court.”

2 It will be useful to reproduce paragraph 4(iv) of the order dated 30.10.2015.

“4(iv) If the Income Tax Authorities fail to succeed in having their Appeal restored and also obtain a stay against releasing this balance amount of Rs.1,90,50,000/- within six months from today, the advocate for the plaintiffs are at liberty to apply to this Court for withdrawing this amount of Rs.1,90,50,000/- from the Prothonotary and Senior Master, High Court, Bombay, against an undertakings similar to clause (iii) above.”

3 On 4.12.2015 the Division Bench has restored the appeal. According to the Counsel appearing for the applicant they did not move the appeal court for stay against releasing the balance amount of Rs.1,90,50,000/- because what they thought was they can move this court after the appeal was restored. In my view, this interpretation of the order is incorrect. The order as quoted above is very clear and it is for the applicant to move the appeal court for stay.

4 In the circumstances, Notice of Motion does not survive and dismissed with no order as to costs.

(K.R.SHRIRAM,J)