

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

WRIT PETITION NO.4500 OF 2016

Nissagar Samrat Nimkhare Pani
Matsya Vyavasayak Sahakari Sanstha
Through its Chief Promoter
Shri Avdhut Bhalchandra Sawant

...Petitioner

Versus

The State of Maharashtra
(Through the Collector Ratnagiri) & Anr.

...Respondents

.....
Mr.Owais A.Pechkar for the Petitioner.
Mr.S.D.Raikar, AGP for Respondent Nos.1 and 2-State.

.....

CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: JULY 24, 2017

P.C. :

1. Rule. Rule made returnable forthwith. By consent, petition is heard finally and disposed of at the stage of admission.
2. This petition is directed against the order dated 30.6.2015 passed by the learned Civil Judge, Senior Division, Ratnagiri, thereby rejecting the application for withdrawal of amount in execution proceeding.
3. The petitioner is a decree holder in a money recovery suit. The respondent-State of Maharashtra has challenged this order in Civil Application No. 1421 of 2015 in First Appeal (St.) No. 9382 of 201. In

First Appeal, this Court has directed the State of Maharashtra to invest entire decretal amount in the trial Court and also directed that the said amount is to be invested in Fixed Deposits of any Nationalized Bank for a period of one year and it is to be continued till the hearing and final disposal of the First Appeal. So also the liberty was granted to make an application for withdrawal of the amount. After increasing in the pecuniary jurisdiction, the First Appeal was transferred to the Additional Sessions Judge, Khed, District-Ratnagiri in the year 2016. The order which is challenged in this Writ Petition was passed in execution proceedings on 30.06.2015. By the said order, the learned Civil Judge, Senior Division, Ratnagiri neither rejected nor allowed the said application for withdrawal of the amount. The High Court has directed to invest the amount in any Nationalized Bank.

4. This Court granted liberty to the petitioner/plaintiff, that the application for withdrawal of the amount is to be made in the First Appeal and therefore, the petitioner is required to make a fresh application in the First Appeal accordingly and that application is to be decided on merits as directed by this Court.

5. In view of the above, Writ Petition is dismissed accordingly.

(MRIDULA BHATKAR, J.)