

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 684 OF 2016
IN
APPEAL FROM ORDER NO. 536 OF 2016

Javed Ahmed Mohd. Tauheed Shaikh ...Applicant/Appellant
vs.
Atharali M. Khan .. Respondent

Mrs. Seema Sarnaik and Mr. Amey Tamhane for the Appellant.
Mr. V.R. Tripathi for the Respondent.

CORAM : M. S. SONAK, J.

DATE : 05 APRIL 2017.

P.C. :-

- 1] Head learned counsel for the parties.
- 2] This is a case of money decree. There are no extraordinary circumstances to depart from normal rule that the appellant should deposit the entire decretal amount together with costs in case the execution of the impugned order has to be stayed.
- 3] Ms. Sarnaik, however, submits that the appellant has no money to deposit. She submits that the appellant has five flats in respect of which there are already orders of attachment in the execution proceedings. She submits that the orders of attachment can continue, but condition for deposit of the amount may not be imposed.
- 4] As noted earlier, there are no extraordinary circumstances pointed out as to why the normal rule in such matter should be departed. That apart, the fact that the appellant has five apartments

in a city of Mumbai is sufficient to, at least *prima facie*, hold that he is in a position to deposit the decretal amount.

5] A query was posed to Ms Sarnaik, learned counsel for the appellant, as to whether the appellant is willing to dispose of at least one of the flats and for which purpose, the order of attachment can also be lifted. On instructions from the appellant, who is present in the Court, she submits that all the five flats have been mortgaged to the banks and therefore, the banks will have to be involved in case of sale of any of the flats.

6] In the aforesaid circumstances, the execution of impugned decree is stayed. However, this shall be subject to the appellant depositing in this Court the entire decretal amount together with costs within a period of four weeks from today. In case of default in the matter of deposit, this ad-interim order shall stand vacated without any further reference to the Court.

7] Further, the attachment orders already issued by the Executing Court, shall operate until the entire decretal amount together with costs is deposited in this Court.

8] The appellant shall have liberty to apply.

9] In view of above, the civil application is disposed of.

(M. S. SONAK, J.)