

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

WRIT PETITION NO. 7908 OF 2015

Kailash Motor Finance Ltd.

...Petitioner

Versus

Rama Automobiles

...Respondent

.....
Mrs.Pranali J. Sawant for the Petitioner.

.....

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: APRIL 25, 2017**

P.C. :

1. Rule. Rule made returnable forthwith. The Petition is heard finally and disposed of at the stage of admission.
2. The learned counsel for the petitioner has filed the affidavit alongwith newspapers dated 05.10.2016 showing the service by publication.
3. Perused the said affidavit. It shows that the petitioner has complied with the procedure of proper service on the respondent.
4. The learned counsel for the petitioner submits that the petitioner has tried to serve the respondent, but it was reported that the respondent company was closed.

5. The petitioner, who is original plaintiff, had filed money recovery Suit No. 1721 of 1996 against the respondent company i.e. defendant no.2. After hearing the parties, the said suit was decreed, vide order dated 25.03.2004 passed by the learned 7th Jt. Civil Judge Senior Division, Pune and directed defendant no.2 to pay Rs. 4,38,597/- to the plaintiff within two months from the date of this order. Thereafter, the petitioner had filed Special Darkhast No. 14 of 2005, which is pending before the Civil Court. The respondent had filed Civil Appeal No. 1104 of 2005 challenging the said judgment and decree. In the said Appeal, the High Court had directed the respondent to deposit the entire decreetal amount, vide order dated 17.01.2007. The said order was also challenged by the respondent in SLP No. 4193 of 2007. The Supreme Court after considering the provisions of sub-rule (3) of Rule 1 of Order 41 of Code of Civil Procedure and the amendment therein has dismissed the SLP and directed the respondent to deposit the entire decreetal amount within a period of eight weeks. Thereafter, the respondent-original judgment debtor had deposited only 50% of the amount at the time of filing the appeal. Though the order of the Supreme Court to deposit

the entire decretal amount was passed, the said order is not obeyed till today. The application was moved by the petitioner/decreet holder for withdrawal of 50% of the amount, but the said application was not allowed. Civil Application No. 1028 of 2009 alongwith Civil Application No. 5387 of 2006 in First Appeal No. 1104 of 2005 was allowed on 15.02.2011. The operative part of the order is reproduced as under:

“(a), subject to condition that withdrawal of the amount will be permitted only after the applicant furnishing security for the entire amount to the satisfaction of the Trial Court”.

Thereafter, the petitioner had filed the application dated 24.09.2013 seeking permission to withdraw the money. However, the said application was rejected on 15.06.2015. Hence, this writ petition.

6. The learned counsel for the petitioner submits that the petitioner is ready to give security of 50% of the amount, which is allowed to be withdrawn.

7. I have considered the order passed by the Supreme Court. There is no stay granted in the impugned order dated 14.07.2008

for proceeding or withdrawal. The order passed by the learned Judge of the trial Court rejecting the application for withdrawal of the amount is not correct. The respondents are not present, though served.

8. In view of the order passed earlier in this matter, which is referred above, Rule is made absolute in terms of prayer clauses (b) and (c). However, the petitioner shall furnish security of 50% of decretal amount, which is allowed to be withdrawn. Hence, the Writ Petition is disposed of.

(MRIDULA BHATKAR, J.)