

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

**CIVIL APPLICATION NO.1832 OF 2016
IN
SECOND APPEAL NO.487 OF 2015**

M/s. Shyam Gandhi Construction Co. ... Applicant
vs.
Shri Premchand Kaliram Agarwal ... Respondent

Mr. Sanjay Kshirsagar for the Applicant.
Mr. Sudhir V. Sadavarte for the Respondent.

Coram : **A.A. Sayed, J.**
Date : 20 November 2017

P.C. :

1 This Civil Application is being filed by the Applicant/original Respondent to withdraw the amount deposited by the Respondent before the Executing Court in Special Darkhast No.35 of 2007. The Second Appeal of the Appellant is already admitted on 2 March 2017. This Court (Coram : S.C. Gupte, J.) has passed the order dated 10 March 2017 in the present Civil Application which reads as follows:

“The controversy in the present Civil Application relates to a solvent security that may be accepted from the Applicant/Original Respondent in the Second Appeal for withdrawal of the amount deposited by the Appellant as a condition of stay in the present Second Appeal. Whereas it does appear reasonable to allow the Applicant to withdraw the sum deposited by the Respondent with accrued interest, if any, it is also equally necessary that some security is furnished by the

Applicant to secure repayment of this amount, in the event the Respondent succeeds in the present Second Appeal. Learned Counsel for the Applicant submits that his client shall present an appropriate affidavit placing on record the particulars of its property/assets and communicating its offer as to the proposed solvent security for withdrawal of this amount. Let such affidavit be filed within two weeks from today. The Civil Application is stood over to 31 March 2017”.

2 In terms of the order dated 10 March 2017, the Applicant has filed an Affidavit dated 6 April 2017. In view of the order dated 10 March 2017 and considering the facts and circumstances of the case, the Civil Application is allowed in terms of prayer clause (b) subject to satisfaction of the trial Court as regards security furnished by the Applicant.

3 The parties shall appear before the trial Court on 27 November 2017 at 11 a.m. with the copy of this order.

4 The trial Court shall pass necessary orders subject to its satisfaction as regards the security furnished and compliances, if any, by the Applicant. Since it is represented that the Applicant is required to be operated at the earliest, the Trial Court shall pass necessary orders on or before 11th December 2017.

5 The Civil Application to stand disposed of.

(A.A. Sayed, J.)