

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER ST. NO.31283 OF 2017
WITH
CIVIL APPLICATION NO.964 OF 2017
IN
APPEAL FROM ORDER ST. NO.31283 OF 2017

Shri Reggie Fernandes ... Appellant / Applicant
Vs.
Shri Joseph D'lunha ... Respondent

Mr.H,.S. Thakkar with S.D. Jadhav for the Appellant
Mr.Vatsal Verma with Pasi Balakram i/b Indo Law Hub for
Respondent

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **DECEMBER 11, 2017**

P.C.:

1. Heard. Admit.
2. By consent, the Appeal from Order is called out and heard finally at the stage of admission.
3. This Appeal from Order is directed against the order dated 20.6.2017 passed by the learned Judge of the City Civil Court in Notice of Motion No.4541 of 2014 in Summary Suit No.3167 of 2012, thereby rejecting the said Motion.
4. The respondent has filed Summary Suit for recovery of an amount of Rs.5,91,000/- in the year 2012. In the said suit, the trial

Court while granting conditional leave by order dated 11.3.2013 directed the defendant/appellant to deposit an amount of Rs.3,21,000/- within a stipulated period. Against this, the defendant filed Appeal from Order which was rejected and thereafter it was challenged in writ Petition No.4051 of 2014. He withdrew the said Writ Petition on the ground that he wanted to produce the acknowledgment of the amount received by the respondents. So, this Court by order dated 29.10.2014 allowed to withdraw the said Writ Petition with a direction that if a fresh application is made by the appellant/defendant, then it is to be decided afresh. Pursuant to the said order, he took out Notice of Motion No.4541 of 2014 that the effect and operation of the order of the trial Court dated 11.3.2013 be stayed. Therefore, the trial Court has rejected the said Notice of Motion by giving a detailed order. The said order is under challenge before this Court.

5. The learned Counsel for the appellant/defendant has submitted that the appellant has paid all the money to the respondent/plaintiff and they have various transactions other than the transactions in the suit. He further submitted that the appellant/defendant has good case on merits and be allowed to lead evidence and file written

statement. He produced two receipts of Rs.50,000/- and Rs.1 lakh deposited in the criminal Court in 2014. He submits that the respondent/plaintiff has filed criminal cases in respect of the recovery of the amount which is the suit amount and in the criminal Court, the appellant/defendant has made a part payment in the Court.

6. Per contra, the learned Counsel for the respondent/plaintiff while opposing this Appeal from Order, has submitted that the appellant should have paid the entire amount which is directed as per the order dated 11.3.2013 of the trial Court. He submitted that the Appeal from Order challenging the said order was rejected by this High Court. The High Court in the Writ Petition has not accepted his plea but has allowed him to withdraw the application because he wanted to show acknowledgment of the payment made by him to the respondent/plaintiff. He further submitted that the plaintiff is waiting for the recovery of the amount since long and has filed Summary Suit in the year 2012.

7. In view of the facts and circumstances, as mentioned above, and argued before me, I am of the view that the defendant is to be allowed to file a written statement on condition to deposit an amount of Rs.150,000/- on or before 31.12.2017 and the suit can be

expedited. Accordingly, the Appeal from Order is disposed of with the following order:

O R D E R

- i) Appeal is partly allowed.
- ii) The appellant is directed to deposit an amount of Rs.150,000/- on or before 31.12.2017 in the trial Court and only after making the deposit, the appellant be allowed to file written statement;
- iii) The said written statement is to be filed within three weeks thereafter.
- iv) The trial Court to proceed with the matter expeditiously, as per the schedule that may be fixed by it.
- v) The parties to cooperate with the trial Court in the trial and it is made clear that the trial Court will not grant any extension.

8. Appeal from Order and the Civil Application are disposed of accordingly.

(MRIDULA BHATKAR, J.)