

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**APPEAL (L) NO.274 OF 2016
IN
SUIT NO.824 OF 1995
WITH
NOTICE OF MOTION (L) NO.2238 OF 2016
IN
APPEAL (L) NO.274 OF 2016**

Kamal Mukut
versus
Khalild Mohammed Sami & Ors.

.... Appellant
... Respondents

.....

- Mr.A.M. Saraogi, Advocate for the Appellant.
- Mr.Jayant Gaikwad, Advocate for Respondent No.4.
- Mr.Khalid M. Sami, Respondent No.1 in person.

**CORAM : R. M. SAVANT &
SARANG V. KOTWAL, JJ.
DATE : 10th OCTOBER, 2017.**

P.C. :

1. The above Appeal is directed against the order dated 13/10/2015 passed in Notice of Motion No.1648/15 in the above suit No.824/95. By the said order the Notice of Motion filed by the plaintiff under Rule 90 of the Bombay High Court (Original Side) Rules, for a Judgment for want of Written Statement, came to be allowed and resultantly, the suit came to be decreed in terms of prayer clause (a) and it was directed that the Plaintiff to pay to the Defendant Nos.1 and 2 an amount of Rs.21,07,000/- with interest at the rate of 8% per annum, from the date of the decree. It is the said part of the order directing

the Plaintiff to pay the said amount with 8% interest from the date of the decree that is taken exception to, by way of the above Appeal. The reasons, why the interest has been directed to be paid from the date of the decree, finds a mention in paragraph No.7 of the impugned order. Since the learned Judge has refused to grant interest for the anterior period for the reasons mentioned in the said paragraph No.7, having regard to the said reasons, we do not deem it proper to vary the said decree in so far as the said aspect is concerned. Hence no case for exercise of the Appellate Jurisdiction is made out, the Appeal is accordingly dismissed.

2. Needless to state that the Appellants i.e. original Defendant Nos.1 and 2 would be entitled to file an appropriate Application for withdrawal of the said amount of Rs.21,07,000/-, which is deposited with interest, which is lying in deposit in this Court.
3. In view of the dismissal of the Appeal, the Notice of Motion (L) No.2238/16 does not survive and accordingly to stand disposed of.

(SARANG V. KOTWAL, J.)

(R. M. SAVANT, J.)