

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

WRIT PETITION NO. 13728 OF 2017

SAI CONSTRUCTIONS THROUGH ITS CHIEF OWNER R S PHAD  
VERSUS  
MACNALLY BHARAT ENGINEERING CO LTD.

...

Advocate for the Petitioner : Shri Kale Gopal D..  
Advocate for the Respondent : Shri Raghvendra Bhise h/f Shri Ambad  
Shrinivas A..

...

**CORAM: RAVINDRA V. GHUGE, J.**  
**DATE :- 27<sup>th</sup> June, 2018**

Per Court:

- 1 I have heard the learned Advocates for the respective sides at length.
- 2 This Court (Coram : V.K.Jadhav, J.), while issuing notice, had passed the following order on 29.11.2017 :-

- "1. *Heard.*
2. *Leave to correct the address of the Respondent.*
3. *The learned counsel for Petitioner / original Decree Holder submits that this writ petition has been filed to the extent of clause (3) of the operative part of the order dated 27th July, 2017 passed below Exhibit 45 by the Executing Court in Special R.D. No.8 of 2015. The learned counsel submits that the Petitioner never given his consent before passing the said order below Exhibit 45 that the Petitioner will not withdraw the above amount from the Court till decision of the appeal. The learned counsel submits that at the time of passing of the order below Exhibit 45, the Respondent / Judgment Debtor has not preferred any appeal, however, before the order passed below Exhibit 47 dated 31st October, 2017, the Respondent / Judgment Debtor has preferred the appeal against the*

*judgment and decree passed in the suit belatedly with an application for condonation of inordinate delay caused in preferring the appeal.*

4. *In view of the above, issue notice to the Respondent, returnable on 10th January, 2018. Hamdast allowed."*

3           There is no dispute that Special Civil Suit No.13/2011 preferred by this Petitioner/ Plaintiff has been decreed by the judgment dated 30.04.2015 and the following order was passed by the Trial Court :-

- "1. *Suit stands decreed.*
2. *The defendant do pay the amount of Rs.39,06,850.25 Ps. along with simple interest at the rate of 6% per annum to the plaintiffs firm from the date of filing of the suit, till realization of the decretal amount.*
3. *The defendant shall pay the costs of the suit to the plaintiff.*
4. *Decree be drawn up accordingly."*

4           The Petitioner, therefore, preferred Special Darkhast No.8/2015 on 17.08.2015. By order dated 01.07.2017, the Executing Court had issued notice to the Judgment Debtor and subsequently, after hearing the litigating sides, passed an order on 27.07.2017 directing the Chief Engineer, Thermal Power Station, Parli Vaijanath, District Beed to deposit an amount of Rs.55 lac in the Executing Court by deducting it from the amount that was payable to the Judgment Debtor. It was also ordered that the Decree Holder will not withdraw the above amount from the Court till the decision of the appeal.

5           It appears from the order dated 27.07.2017 that the Judgment Debtor made the Court to believe that a Regular Civil Appeal was preferred before the Appellate Court. It is now revealed that such an appeal was filed only on 23.08.2017 along with the application for condonation of delay, for challenging the judgment and decree dated 30.04.2015. It is, therefore, apparent that the Judgment Debtor has misled the Executing Court and made the Court to believe that an appeal was already filed and pending.

6           The Decree Holder moved an application Exhibit 47 on 31.08.2017 requesting the Executing Court to release the amount of Rs.55 lac since the Decree Holder was paying interest at the rate of 16% per annum to the Bank from which it has taken the loan for business purposes. By the impugned order dated 31.10.2017, the Executing Court had recorded that the Decree Holder had made a statement that he would not withdraw the said amount till the decision of the Appellate Court. It is strenuously contended in this petition that no such statement was made.

7           It is, therefore, obvious that the Judgment Debtor has not made an honest statement before the Executing Court. Failure to submit an appeal was suppressed and the Executing Court was made to believe that the appeal had been filed by the Judgment Debtor.

8           Considering the above and especially the unfair conduct of the Respondent/ Judgment Debtor, this Writ Petition is partly allowed. The

impugned orders dated 27.07.2017 and 31.10.2017 are partly modified by permitting the Decree Holder to withdraw an amount of Rs.30 lac out of the deposited amount of Rs.55 lac under the following conditions :-

- (a) An application would be filed by the Decree Holder duly identified by his Advocate, before the Executing Court.
- (b) The representative of the Petitioner, namely, Rajabhau Shriram Phad shall submit his recent photograph, proof of permanent address, photocopy of PAN card and photocopy of Voters Identity Card issued by the Election Commission, while requesting for withdrawal of the amount deposited in the Executing Court.
- (c) The said Petitioner will also file an affidavit-cum-undertaking declaring that he would return the entire amount within six weeks in the event, the result of the pending litigation in relation to the judgment and decree, is against him.
- (d) The remaining amount of Rs.25 lac will be invested in a Fixed Deposit Receipt in any nationalized Bank by the Executing Court, initially for a period of one year and thereafter, to be renewed for each year till the execution proceedings are decided.