

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

954 CIVIL APPLICATION NO. 16475 OF 2016
IN SA/814/2016 WITH CA/15427/2016 IN SA/814/2016

DATTA VITTHAL SONTAKKE
VERSUS
VIKRAM SHIVDAS KALYANKASTURE

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Advocate for Applicant : Mr. A. M. Gaikwad
Advocate for Respondent : Mr. V. S. Panpatte

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CORAM : V. K. JADHAV, J.
DATED : 23rd MARCH, 2018

PER COURT:-

1. Heard both sides.
2. The applicant is the original defendant. Respondent/plaintiff has instituted a suit for recovery of amount. The trial court has decreed the said suit. Being aggrieved by the same, the present applicant has preferred Regular Civil Appeal no.5 of 2014 and during the pendency of the said appeal, filed application Exh.5 for staying execution and operation of the decree and judgment in appeal. The learned District Judge-1, Kandhar by order dated 30.06.2014 has stayed the effect of the decree under appeal on condition to deposit 50% of the

decreetal amount in the court. Accordingly the applicant has deposited the amount as directed, before the first appellate court. Thereafter, the first appellate court by judgment and order dated 27.09.2016 allowed the appeal and quashed and set aside the judgment passed by the trial court and dismissed the suit of the respondent/plaintiff. Being aggrieved by the same, the respondent/plaintiff has preferred Second Appeal no.814 of 2016, which is pending before this court. The present applicant/original defendant has filed application Exh.25 before first appellate court for refund of the said amount. However, the first appellate court has rejected the said application on the ground that the second appeal is pending before this court. It appears that in terms of Order XLI Rule 5 & 6 of CPC, the first appellate court has stayed the effect of the judgment and decree passed by the trial court on condition of depositing 50% of the decreetal amount. However, the first appellate court has allowed the said appeal and accordingly quashed and set aside the judgment and decree passed by the trial court.

3. In view of same, the applicant is entitled for refund of the amount with accrued interest, if any, and in case the

respondent/plaintiff succeeds in the second appeal, the respondent/plaintiff may execute the money decree in terms of provisions of the Order XXI of the Code of Civil Procedure.

4. In view of above, civil application is allowed in terms of prayer clause "A".

5. Fix the second appeal for hearing, as to admission, on 11.06.2018.

(V. K. JADHAV, J.)

vsm/