

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

**CIVIL APPLICATION NO. 3751 OF 2018
IN
FIRST APPEAL (ST) NO. 28196 OF 2018**

Office of Superintending Engineer	}	
(MORT) and Ors.	}	Applicants
versus		
M/s. Dolly Enterprises	}	Respondent

Mr. Kevic Setalvad-Senior Advocate and
Mr. S. D. Shetty and Mr. Arsh Misra I/b.
M/s. M.V.Kini and Co. for the applicants.

Mr. Mr. Gaurav Joshi-Senior Advocate
with Mr. Chirag Mody with Mr.Munaf
Virjee I/b. M/s. ABH Law LLP for the
respondent.

**CORAM :- S. C. DHARMADHIKARI &
B. P. COLABAWALLA, JJ.**

DATE :- OCTOBER 30, 2018

P.C. :-

1. Having heard both sides and as we have found in the companion appeal as well, the amount which has been claimed is under several heads. The amount under the heads “mental agony” and “loss of profit/business” being omitted, what we find is that the learned Judge, on appreciation and appraisal of the oral and documentary evidence, has arrived at the conclusion that the outstanding bills were not released within the reasonable time. The project work started on 15th April, 2008 and 5th March, 2009.

The work was commenced and the assigned work completed within the stipulated time. There was no complaint about quality and quantity of the work done. The bill raised was in the sum of Rs.54,51,271/-. This was the amount on which the decree on admission was passed on 29th March, 2016.

2. As far as the balance amount, the matter went to trial. The interest claimed on the outstanding bill was at 18%. The parties led evidence. The searching cross-examination of the witnesses of the plaintiff did not result in anything substantial, according to the learned Judge.

3. *Prima facie*, therefore, given this situation, it will be improper to grant an unconditional stay of execution of the decree. Since the decree has been passed in the sum of Rs.2,48,32,086/-, we are of the opinion that interest of justice would be served if we pass the following order:-

(i) On the appellants' depositing a sum of Rs.1,25,00,000/- in the trial court within a period of 12 weeks from today, there would be a stay of execution and enforcement of the decree under challenge till the decision of this appeal.

(ii) In the event this amount is not deposited within the time stipulated above, the decree shall become enforceable and executable and it would be open for the decree holder to then recover the sums under the decree in accordance with

law.

(iii) for a period of 12 weeks from today, no further steps in execution shall be taken by the executing court only to enable the applicants to comply with this order and direction.

(iv) In the event the decree holder desires to withdraw the sum deposited, it can make an application to the trial court in that behalf and the trial court shall allow withdrawal of the amount by the decree holder on the condition that the decree holder furnishes security to the extent of 50% of the amount in the form of a Bank Guarantee of a Nationalised Bank and for the balance, an undertaking to bring back that amount with such interest awarded by the higher court in the event the appellants succeed in the appeal.

4. With the aforesaid directions, the civil application is disposed of.

(B. P. COLABAWALLA, J.)

(S.C.DHARMADHIKARI, J.)