

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

WRIT PETITION NO.451 OF 2018

Niwas Spinning Mills Ltd.

.. Petitioner

Vs.

H.P. Daga & Company

.. Respondent

Mr.Priyal Sarda for the petitioner.

None for the respondents.

CORAM : R.D. DHANUKA, J.

DATE : 14th September 2018

P.C.:

. By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order dated 6th September 2017 below Exhibit-7 passed by the learned District Judge-1, Solapur directing the petitioner to deposit 50% amount of the decretal amount with interest within a period of one month from the date of the said decree and to furnish adequate security for rest of the decretal amount within the same period.

2. Learned counsel for the respondents invited my attention to the application dated 6th October 2017 filed by the petitioner seeking modification of the order dated 6th September 2017 showing the readiness of the petitioner to deposit 25% principal amount of the decree within one month and remaining 25% principal amount in next one month. The petitioner has agreed to furnish the security for 50% principal amount within one month from the date of the order dated 6th October 2017. The said application was allowed by the learned trial Judge by an order dated

6th October 2017. The petitioner has however impugned the original order dated 6th September 2017.

3. Mr.Sarda, learned counsel for the petitioner submits that considering the financial condition of the petitioner, the petitioner be shown indulgence by this Court by deleting the condition of furnishing the security for 50% principal amount ordered by the learned District Judge-1, Solapur on 6th September 2017. He submits that an amount of Rs.10 lakhs is already deposited by the petitioner and the balance amount would be deposited by his client within a reasonable period.

4. A perusal of the application dated 6th October 2017 filed by the petitioner clearly indicates that by the said application, the petitioner had applied for modification of the order dated 6th September 2017 and had agreed to deposit 25% principal amount of the decretal amount within one month and remaining 25% principal amount in next one month from the date of the said order. The petitioner also had agreed to furnish the security for 50% principal amount within one month from the date of the said order. The learned District Judge had granted the said relief in favour of the petitioner by an order dated 6th October 2017. In my view, the order dated 6th September 2017 has merged with the order dated 6th October 2017 and thus cannot be challenged by this petition at this stage. The petitioner has succeeded in the application dated 6th October 2017. Two months' period granted by the learned District Judge as prayed in the order dated 6th October 2017 had expired on 6th December 2017. I am thus not inclined to interfere with the order dated 6th September 2017 which has merged with the order dated 6th October 2017. The consequences of non-compliance of the

order dated 6th September 2017 merged with the order dated 6th October 2017 would follow. The petition is misconceived and is accordingly dismissed. No order as to costs.

R.D. DHANUKA, J.