

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

**CIVIL APPLICATION NO.631 OF 2018
IN
FIRST APPEAL NO.225 OF 2018**

State Bank of India Through
Its Authorized Officer .. Applicant

V/s.

Nisakao Photo Through Its Partners
Laxmi Pratap Gohokar and Ors. ... Respondents

Ms.Anjali N. Helekar a/w Ms.Anu C. Kaladharan i/b Mr.Neel Helekar
for the Applicant

Mr.Umesh Taware a/w Ms.Mrunal Mandhare i/b M/s.S.Ashwini Kumar
and Co. for the Respondents

**CORAM: K.K. TATED &
B. P. COLABAWALLA, JJ.**

DATED : APRIL 24, 2018

P.C. :

1 Heard.

2 This Civil Application is preferred by Applicant original defendant for stay of the impugned judgment and decree dated 25.10.2017 passed by 2nd Joint Civil Judge, Senior Division Satara in Special Civil Suit No. 276 of 2010. Operative part of the decree reads thus:

“ORDER

1. Suit is hereby decreed with cost.
2. The defendant bank shall pay an amount of Rs.25,10,000/- (Rupees Twenty Five Lakhs Ten Thousand only) to the plaintiff firm with interest at the rate which they charged on loan amount of the plaintiff firm from the date 28/03/2007.
3. The defendant bank shall also pay an amount of Rs.10,00,000/- (Rupees Ten Lakhs only) with interest at the rate which they charged on loan amount of the plaintiff firm from the date 30/01/2008.
4. Amount of Rs.25,10,000/- for loss of machinery and raw material and amount of Rs.10,00,000/- towards mental agony be adjusted in the outstanding amount on the said dates against the plaintiff firm.
5. The defendant bank is not entitled for amount by way of charges of security from the date of F.I.R. i.e. from 29.01.2008 as there was gross negligence on the part of bank.
6. Record shows that the plaintiff firm deposited Rs.5,00,000/- on 26/12/2007 and Rs.50,00,000/- has been recovered by defendant bank on 31/03/2016.
7. If after adjustment of amount determined by this Court for the loss of machinery, raw material and mental agony from the respective dates, in the outstanding amount against plaintiff firm, if any surplus amount is there payable to the plaintiff firm then the defendant bank shall pay it to the plaintiff firm with interest at the rate of 12% from the

date on which the amount was surplus.

8. Decree be drawn up accordingly.”

3 The learned counsel for the Applicant defendant submits that as per Recovery Certificate dated 30.03.2010 passed by Debt Recovery Tribunal, Pune in O.A.No.143 of 2007 they have to recover more than Rs.63,43,970.45 with interest @ 12% p.a. from the date of Application dated 03.10.2007 from Respondents original plaintiffs. She further submits that at the time of passing impugned judgment and decree, Trial Court has failed to consider the fact that there is no question of making any adjustment as per Recovery Certificate issued by Debt Recovery Tribunal and which is against the law. Not only that, there is no question of passing decree for the interest on the sum of Rs.10,00,000/- which was awarded towards damages. She submits that in the interest of justice, this Hon'ble Court be pleased to stay the operation and implementation of the impugned judgment and decree dated 25.10.2017 passed by Trial Court.

4 On the other hand, the learned counsel for the Respondent original plaintiff vehemently opposed the present Civil Application. He filed Affidavit-in-Reply dated 07.03.2018. He submits that as per the impugned judgment and decree, they have already filed Execution Application before the Trial Court. He submits that as per the judgment and decree dated 25.10.2017, they have to recover more than Rs.1,66,88,456.99 from the Applicant defendant. To that effect, across the bar, he has tendered photocopy of the Execution Application. Bare reading of the Execution Application shows that Respondent plaintiff is entitled to recover the sum of Rs.79,83,240.20/- with interest from the plaintiff as per Execution Application. Applicant has mentioned in

Execution Application that the sum of Rs.11,93,787.67 is also included by way of interest on sum of Rs.10,00,000/- which is awarded towards damages. He submits that in view of these facts, there is no question of staying the impugned judgment and decree passed by Trial Court.

5 Heard both the sides at length.

6 It is to be noted that as per the judgment and decree passed by Trial Court, Applicant defendant is liable to pay sum of Rs.25,10,000/- with interest as awarded by the Trial Court and sum of Rs.10,00,000/- without any interest because there is no question of granting any interest on damages and amount.

7 In view of these facts, we are of the opinion that operation and implementation of the impugned judgment and decree passed by the Trial Court can be stayed on condition that Applicant original defendant to deposit sum of Rs.70,00,000/- (Seventy Lakhs Only) in the Registry of this court within six weeks from today. Hence, following order is passed:

a) The operation and implementation of the impugned judgment and decree dated 25.10.2017 passed by 2nd Joint Civil Judge, Senior Division Satara in Special Civil Suit No. 276 of 2010 is stayed on condition that Applicant to deposit sum of Rs.70,00,000/- (Seventy Lakhs Only) in the Registry within six weeks from today, failing which the Civil Application shall stand dismissed without further reference to the court.

b) If amount is deposited within stipulated time as stated

hereinabove, Registry is directed to invest the same in fixed deposit of any nationalised bank initially for a period of one year and same to continue till further orders.

c) Liberty granted to the Respondent plaintiff to prefer appropriate Application if they so desire for withdrawal of the amount and that will be decided on its own merits.

d) If Applicant failed and neglected to deposit the said amount within stipulated time as stated hereinabove, Respondent plaintiff is entitled to proceed with Execution Application according to law.

e) It is made clear that if amount is deposited within stipulated time as stated hereinabove, Applicant defendant is entitled to execute the Recovery Certificate dated 30.03.2010 passed by Debt Recovery Tribunal, Pune in O.A.No.143 of 2007 according to law.

f) Civil application stands disposed of accordingly.

(B. P. COLABAWALLA, J.)

(K.K. TATED, J.)