

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

**CIVIL APPLICATION NO.2394 OF 2018
IN
FIRST APPEAL NO. 1218 OF 2016**

M/s. Shrishtee Nursery System Pvt. Ltd. .. Applicant

v/s.

The State of Maharashtra & Ors. ..Respondents

Mr. Atul G. Damle, Senior Counsel a/w Mr. Shivshankar Patil and Mr.
Pravin Dabade for the applicant
Mr. A.R. Patil, AGP for respondent State

**CORAM : M.S. SANKLECHA &
SANDEEP K. SHINDE, J.J.**

DATED : 26th JULY, 2018.

P.C.

1. By this Civil Application, the applicant has effectively prayed for following reliefs :-

(a) That this Hon'ble Court may kindly recall the order dated 1st August, 2016 in C.A. No.3407 of 2016 in F.A. No. 1218 of 2016 and vacate the ad-interim relief granted by this Hon'ble Court or this Hon'ble Court may continue ad-interim relief subject to further depositing deficit amount of Rs.12,89,88,21/- as per the order dated 1st August, 2016 calculated as on date 31st December, 2017.

(b) That this Hon'ble Court may kindly be allowed to withdraw the amount of Rs.4,70,74,871/- as on dated 31st December, 2017 out of the amount deposited by Respondent which is admitted amount as per order dated 22nd November, 2013 passed by this Hon'ble Court.”

2. So far as the prayer (a) is concerned, it is the case of the applicant that the principal sum adjudged would mean the principal sum along with the pre-suit interest as determined on the date of passing of the decree. Reliance in support of the above submission is placed upon the decision of the Constitutional Bench of the Supreme Court in ***Central Bank of India Vs. Ravindra, 2002 (1) SCC 367*** and on the interpretation of Section 34 of the Civil Procedure Code (CPC). It is, therefore, submitted that the ad-interim relief granted on 1st August, 2016 be vacated or the respondent be directed to deposit the entire sum adjudged by the impugned decree.

3. As against the above, Mr. Patil learned AGP raised a preliminary issue that in view of Order XXVII Rule 8A of the CPC in cases following under Rule XXXXI Rule 5 and 6 thereof, the Government is not required to offer any security while seeking a stay of the order of the Trial Court before the Appellate Court. In support, reliance is also placed upon the

decision of the Supreme Court in *Kanpur Jal Sansthan and Anr. Vs. Bapu Constructions*, (2015) 5 SCC 267.

4. In this case, the applicant does not dispute that the State Government is the appellant before us. The only submission of Mr. Damle is that Order XXVII Rule 8A of the CPC only applies in case of any act done by a public officer in his official capacity. This is not so as Order XXVII Rule 8A of the CPC also mandates that no security is required from the Government to stay the order / decree of the Court, which is in appeal. Moreover, the decision of the Apex Court in Central Bank of India (supra) relied upon by the applicant is *prima facie* distinguishable on facts. In any event, the appellant being the State, the deposit made by the respondent State, would in the present facts meet the ends of justice. This is more particularly so as the issue raised by the applicant herein raises a question of interpretation of Section 34 of the CPC, which can be gone into at the final hearing of the appeal. In the above view, we reject prayer clause (a) and confirm the stay granted by this Court on 1st August, 2016.

5. So far as prayer (b) is concerned, Mr. Patil learned AGP appearing for the State has no objection if the applicant is allowed to

withdraw the amount of Rs.4,70,74,871/- deposited by the respondent State, on providing security to the satisfaction of the trial Court. Thus, prayer clause (b) as above is allowed subject to providing security to the satisfaction of the trial Court.

6. In view of the above, prayer clause (a) above is dismissed and prayer clause (b) above is allowed. Accordingly, the Civil Application is disposed of in the above terms.

(SANDEEP K. SHINDE J.)

(M.S. SANKLECHA, J.)