

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.733 OF 2018
IN
SECOND APPEAL NO.487 OF 2015

Shyam Gandhi Construction Co., Pune	 Applicant
V/s.	
Premchand Kaliram Agarwal	 Respondent

Mr. Sudhir V. Sadavarte for the Applicant.

Mr. Sanjay Kshirsagar for the Respondent.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 1ST AUGUST, 2018.

P.C. :

1. Heard Mr. Sadavarte, learned counsel for the Applicant, and Mr. Kshirsagar, learned counsel for the Respondent.

2. This Civil Application is filed seeking withdrawal of the amount deposited by the Respondent in the Executing Court in Special Darkhast No.35 of 2007.

3. The Second Appeal is already admitted on 2nd March 2016 and as per the order passed by this Court on 10th March 2017, the Applicant was permitted to withdraw the amount deposited by the Appellant i.e.

Respondent herein, with interest accrued thereon, on furnishing the security towards repayment of the said amount, in the event the Respondent succeeds in the present Second Appeal.

4. Accordingly, the Applicant has filed before the Executing Court an appropriate affidavit on 6th April 2017. However, the said application came to be rejected.

5. Hence, the second application came to be filed by the Applicant before this Court, bearing Civil Application No.1832 of 2016, which came to be allowed by this Court on 20th November 2017 in terms of prayer clause (b), subject to satisfaction of the Trial Court as regards security to be furnished by the Applicant. Accordingly, the Applicant has furnished the affidavit and again filed an application before the Executing Court. The Executing Court, however, vide its order dated 11th December 2017, rejected the said application, in view of the objection taken by the Decree-holder on the ground that, the property does not stand in the sole name of the Applicant Jaynarayan Devkishan Gandhi, but his son is also having the joint ownership therein and unless the affidavit of his son discloses that, he is ready to abide by the decision of the Second Appeal and to repay the amount, if the decision goes against his father, his affidavit cannot be sufficient to act as security.

6. In view thereof, learned counsel for the Applicant has filed a fresh affidavit of Jaynarayan Devkishan Gandhi and also his son Prakash Jaynarayan Gandhi, making it clear that the property offered as security is sufficient to secure the repayment and if the said Second Appeal is allowed, both of them have no objection to put the said property in execution proceedings.

7. In my considered opinion, in view of these two affidavits, now there remains no hitch. Therefore, instead of sending the matter again to the Trial Court for considering whether it is satisfied with the security, it would be appropriate to direct the Executing Court to allow the application of the Applicant and to permit him to withdraw the amount, with interest accrued thereon, as on date. Ordered accordingly.

8. Civil Application is disposed of in the above terms.

[DR. SHALINI PHANSALKAR-JOSHI, J.]