

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

WRIT PETITION NO. 1171 OF 2017

M/s.Shripal Agencies	...	Petitioner
V/s.		
Anil Narhar Kulkarni & Anr.	...	Respondents

- Mr.Abhijit P. Kulkarni for the Petitioner.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 13th MARCH, 2018.

P.C. :

- 1] Heard learned counsel for the Petitioner.
- 2] Respondent Nos.1 and 2, though duly served with notice, informing them that this Writ Petition will be taken up for final hearing, they have not appeared in this Writ Petition.
- 3] By this Writ Petition, the Petitioner is challenging the order dated 19th July 2016 passed by the Adhoc District Judge-2 Baramati, below the Application at Exhibit-14 in Regular Civil Appeal No.113 of 2015.
- 4] The Application at Exhibit-14 was filed by the present Petitioner, who is the Appellant before the Appellate Court for

withdrawal of the amount of Rs.20,00,000/-, which is deposited by the Respondents, towards satisfaction of the decree.

5] The Appellate Court has, however, rejected the said application on the count that the said amount was deposited in pursuance of the order under Order 38 Rule 9 of Code of Civil Procedure (*for short*, “C.P.C.”) and hence, the withdrawal of such amount cannot be permitted, even on furnishing sufficient Bank Guarantee.

6] While challenging this order of the Appellate Court, the submission of learned counsel for the Petitioner is that there was no reason at all for the Appellate Court to make any distinction between the amount deposited in pursuance of the Order 38 Rule 5 of C.P.C. or in satisfaction of the execution of the decree. It is urged that, as per the order passed by this Court on 14th March 2013 in Civil Application No.3817 of 2012, when the Appeal was pending before this Court, the amount was directed to be deposited after the auction of the property in the Executing Court with a further direction that, it may be dealt with in accordance with law.

7] Learned counsel for the Petitioner has then placed reliance on the judgment of the Hon'ble Apex Court in the case of *Kanpur Jal*

Sansthan & Anr. V/s. Bapu Constructions, (2015) 5 SCC 267, to submit that, “Ordinarily, execution of a money decree is not stayed in as much as satisfaction of money decree does not amount to irreparable injury and in the event of the appeal being allowed, the remedy of restitution is always available to the successful party. Still the power is there, of course a discretionary power, and is meant to be exercised in appropriate cases”. It is pointed out that, in this judgment of the Hon'ble Apex Court, the amount was permitted to be withdrawn with furnishing security for half of the amount and half of the amount without security.

8] It is submitted that, the Petitioner is ready to furnish the security and as it being a money decree for recovery of money, in the absence of any stay granted to the execution of the decree, the Petitioner may be permitted to withdraw this amount.

9] The perusal of the say given by the Respondents to the application filed by the Petitioner before the Appellate Court makes it clear that, the Respondents have also stated that if the Petitioner is permitted to withdraw the amount, proper security to that effect needs to be furnished by the Petitioner. The Petitioner is accordingly ready to give solvent surety to the satisfaction of the Court. Even otherwise also, it being a money decree and the amount of

Rs.20,00,000/- is already deposited, as held the Hon'ble Apex Court in the case of *Kanpur Jal Sansthan (supra)*, in the absence of any stay granted to the execution of the decree, there is no harm in allowing the Petitioner to withdraw the said amount subject to furnishing the solvent security to the satisfaction of the Appellate Court.

10] Accordingly, the Writ Petition is allowed. The impugned order passed by the Appellate Court is set-aside. The Appellant is permitted to withdraw the amount of Rs.20,00,000/- deposited by the Respondents in the Appellate Court on furnishing the solvent security for the entire amount, to the satisfaction of the Appellate Court concerned, within a period of six weeks.

[DR.SHALINI PHANSALKAR-JOSHI, J.]