

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 1189 OF 2017**

Silver Oak Solutions Pvt. Ltd. & Ors.	...Applicants
Versus	
The State of Maharashtra & Anr.	...Respondents

Mr. D. N. Nalawade I/b Mr. Sathyanarayanan for the Applicants

Mr. Vinod Chate, A.P.P for the Respondent No.1-State

Mr. Niranjan Shrikant Mundargi for the Respondent No.2

CORAM : REVATI MOHITE DERE, J.
THURSDAY, 18th JANUARY, 2018

P.C. :

1 Heard learned counsel for the parties.

2 By this application, the applicants have impugned the order dated 23rd June, 2017 passed by the learned Additional Sessions Judge, Borivali Division, Dindoshi, Mumbai, below Exhibit 2 in Criminal Appeal No. 151 of 2017, by which the learned Judge was pleased to suspend the sentence of the applicants, subject to the applicants depositing 25% of the compensation amount of Rs. 12 crores i.e. Rs. 3 crores within 1½ months, pending the disposal of the appeal.

3 Learned counsel for the applicants submits that the said direction to deposit Rs. 3 crores was onerous, harsh and unreasonable. Learned counsel relied on the decision of the Apex Court in the case of ***Dilip S. Dahanukar vs. Kotak Mahindra Co. Ltd. & Anr.***¹. He submitted that the cheque amount of Rs. 5 crores and Rs. 2.48 odd was not payable to the respondent No.2. He submitted that there was only one transaction between the parties, yet the respondent No. 2 filed three separate cases for the same amount. He submitted that the applicants have a good case on merits and as such prays for reduction of the said amount.

4 Learned counsel for the respondent No. 2 opposes the application. He submitted that no interference is warranted in the impugned order.

5 Perused the papers, including the impugned order. It is not in dispute that two cheques were issued; one for Rs. 5 crores and one for Rs. 2.48 odd. Whether or not the said amounts were payable to the respondent-company, is a matter which will be decided by the Appellate

1 (2007) 6 SCC 528

Court in the appeal pending before it and hence, it is not necessary to consider the same. The applicants appeal filed against their conviction and sentence under Section 138 r/w 141 of the Negotiable Instruments Act, is pending in the Sessions Court. The learned Sessions Judge in the application (Exhibit 2) filed in criminal appeal has directed the applicants to deposit 25% of the compensation amount of Rs. 12 cores, which is Rs. 3 crores. In the peculiar facts of the case, the said condition directing the applicants to deposit 25% of the compensation amount, is an onerous and harsh condition.

6 Considering the aforesaid, the application is allowed and the impugned order dated 23rd June, 2017 passed by the learned Sessions Judge directing the applicants to deposit 25% of the compensation amount i.e. Rs. 3 crores, is modified to the extent, that the applicants shall now deposit Rs. 1 crore instead of Rs. 3 crores. Learned counsel for the applicants states that the applicants will deposit Rs. 1 crore within eight weeks from today. Learned counsel for the applicants also submits that the applicant Nos. 2 and 3 will remain present before the Appellate Court on 16th March, 2018. The said statements are accepted.

7 In view of the said statement made by the learned counsel for the applicant Nos. 2 and 3, that the applicant Nos. 2 and 3 will remain present before the appellate Court on 16th March, 2018, learned counsel for the respondent No. 2 states that they will not take any steps to execute the conviction warrant issued by the learned trial Court till the next date i.e. 16th March, 2018. Learned counsel for the respondent No. 2 also states that he will inform the concerned police station about the same. Statement accepted.

8 Both, learned counsel for the applicants and respondent No. 2 state that the appeal filed by the applicants be expedited. Accordingly, the hearing of the appeals pending before the learned Sessions Judge, is expedited.

9 The application is allowed on the aforesaid terms and is accordingly disposed of.

10 All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.