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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO.976 OF 2018
IN
APPEAL NO.177 OF 2015
IN
EXECUTION APPLICATION NO.2259 PF 2015
IN
SUIT NO.3473 OF 2005**

Darshana Manilal Doshi

....Applicant
(Original Respondent
/Decree Holder)

In the matter between

M/s. Kanan Knitwear & Ors.

.... Appellants
(Original Respondents
and Original Defendant
Nos. 1 to 4 in suit)

V/s

Darshana Manilal Doshi

.... Respondent
(Decree Holder)

Mr. Pradeep Sancheti, Senior Counsel alongwith Ms. S.I. Joshi I/b M/s S.I. Joshi and Co. for the Applicant/Respondent.

Mr. Dharam Jumanani alongwith Mr. Suraj Iyer I/b M/s. Ganesh and Company for the Appellant.

**CORAM: B. R. GAVAI &
RIYAZ I. CHAGLA, JJ.**

DATE: 13th December, 2018

P.C.:-

1] Applicant has approached this Court by way of present Notice of

Motion, seeking clarification that in view of the orders dated 8/9/2016 and 23/7/2018, on non-deposit of decretal amount, Applicant is free to proceed further with the execution of decree.

2] Perusal of record would reveal that against the decree passed by the learned Single Judge, an appeal is preferred by the non-applicants. In the said appeal, Notice of Motion No.1841 of 2016 was filed for stay to the decree passed by the learned Single Judge. Division Bench of this court directed that ad-interim stay to be continued subject to deposit of decretal amount with the Prothonotary & Senior Master or to furnish security to the satisfaction of Prothonotary & Senior Master. Being aggrieved thereby, non-applicants/Appellants preferred an SLP before the Hon'ble Apex Court. It will be appropriate to reproduce the order passed by the Hon'ble Apex Court, which reads thus :-

“O R D E R

Heard.

It is agreed by learned counsel for the parties that the direction to deposit in terms of the impugned order will operate only if the petitioner is liable to deposit any amount under the decree. Any dispute in this regard can

be settled by the executing court.

The special leave petition is accordingly disposed of.

Pending applications, if any, shall also stand disposed of.”

As such, the Hon'ble Apex Court has observed that, any dispute with regard to liability of Petitioner to pay or not, has to be decided by the learned executing court.

3] In that view of the matter, the Applicant/decreed holder applied for execution of decree before the learned Single Judge. However, the learned Single Judge has observed that in view of pendency of appeal, he cannot proceed further.

4] We find that there should be no impediment in the way of learned executing court to proceed further with execution. Admittedly, stay granted by this Court was subject to decretal amount being deposited or security to the satisfaction of the Prothonotary & Senior Master being provided by the Appellants. Admittedly, none of that has been done. It appears that the

Appellants contended before the Hon'ble Apex Court that they are not liable to pay the amount under the decree. It appears that in this premises, the Hon'ble Apex Court observed that the executing court would decide the issue as to whether the Appellants are liable to deposit the amount or not.

5] As such, it is clear that the inquiry as to whether the Appellants are liable to pay under the decree or not, has to be gone into by the learned executing court. We, therefore, clarify that the learned executing court is entitled to proceed further with the execution proceedings irrespective of pendency of the appeal. Needless to state that in the said proceedings, learned Single Judge would also decide the question as to whether the Appellants are liable to deposit the amount under the decree or not.

6] The Notice of Motion is allowed in the aforesaid terms and disposed of.

(RIYAZ I. CHAGLA J.)

(B. R. GAVAI, J.)