

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.**

Civil Application No. 03872 of 2019
(In Second Appeal No. 0851 of 2016)

District : Aurangabad

M/s. Shah Traders,
Through its Partner,
Mr. Siddhartha Dilip Parekh,
Power of Attorney Holder
Mr. Dilip Govindji Parekh,
Age : Major,
Occupation : Business,
R/o. B-1, Kohinoor Complex,
Laltakee Road,
Dist. Ahmednagar.

.. Applicant
(Original
plaintiff)

versus

Vrudheshwar Sahakari Sakhar
Karkhana Ltd.,
Through its Managing
Director,
Adinath Nagar,
Taluka Pathardi,
Dist. Ahmednagar.

.. Non-applicant
(Original
defendant)

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Mr. L.D. Vakil, Advocate, for the applicant.

Mr. G.B. Rajale, Advocate, for the non-applicant.

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 15TH APRIL 2019

ORAL ORDER :

01. Present application has been filed for
withdrawal of the amount deposited by the appellant -

Soeicty as per the order passed by this Court on 26th February 2018.

02. While granting stay, this Court has put a condition to the appellant to deposit 75 % of the decretal amount and accordingly the said amount has been deposited. Now, the applicant - respondent in second appeal prays for withdrawal of the same.

03. Learned Advocate appearing for the non-applicant - appellant has objection on the ground that initially the suit filed by the applicant came to be dismissed and then the appellate Court has reversed that decree. Now, the second appeal is pending for admission and, therefore, it is stated that the applicant shall not be allowed to withdraw the said amount. Alternatively, it was also prayed, if the applicant is allowed to withdraw the said amount, condition be put. A proposal has also been made by the appellant to refer the matter for mediation.

04. It is to be noted that the Special Civil Suit No. 141 of 2008 was dismissed by 02nd Joint Civil Judge (Senior Division), Ahmednagar, on 05-10-2009, which was in respect of recovery of amount. The original plaintiff - present applicant approached District Court, Ahmednagar, by filing Regular Civil Appeal No. 381 of 2012. The said appeal has been

allowed by learned District Judge-03, Ahmednagar, on 10-02-2016, thereby setting aside the decree passed by the trial Court and decreeing the suit thereby allowing the plaintiff to recover amount of Rs. 4,89,650/- along with interest at the rate of 9 % per annum from the date of suit till actual realization. Now, the second appeal is pending for admission.

05. The condition was put while granting stay to the money decree by this Court, that the appellant should deposit 75 % of the money decree and accordingly in compliance of the same, the amount has been deposited. When the decree of the first appellate Court is in favour of the applicant, there will not be any hurdle for the applicant to withdraw the said amount. However, definitely condition is required to be put so that in case of any reversal order in this second appeal, the appellant should get a guarantee that he would get back the amount.

06. Hence, the following order :-

The applicant herein is allowed to withdraw the amount of Rs. 3,67,238/- deposited in this Court, subject to giving an undertaking, within 15 days, that in case, he is directed to repay the amount, or in the event, decision of this Court goes against him, he would make good the said amount to the appellant.

07. The civil application is disposed of in the above terms.

(Smt. Vibha Kankanwadi)
JUDGE

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