

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

**926 CIVIL APPLICATION NO.14234 OF 2016
IN SA/690/2016**

**KRUSHNAKUMAR BABURAO KULKARNI
VERSUS
SUMEDHA SUNIL CHITPURE (SHINDE)**

...

Mr. S.V. Natu, Advocate for the appellant

Mr. K.T. Jamdar & Mr. R.S. Deshmukh, Advocates for the sole respondent

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CORAM : SMT. VIBHA KANKANWADI,J.

DATE : 06th MARCH, 2019

PER COURT :

1 Present application has been filed for stay to the further proceedings, taken up by way of application dated 06.08.2018 before the learned Additional District Judge, Latur in R.C.A. No.20/2014.

2 Feeling aggrieved by Judgment and Decree passed on 30.04.2016 by District Judge, Latur in R.C.A. No.20/2014, thereby setting aside the Judgment and Decree dated 14.12.2013 passed by learned Civil Judge Senior Division, Latur in Special Civil Suit No.188/2010 and thereby dismissing the suit for recovery of amount, the applicant, who is the appellant herein has filed the Second Appeal before this Court. The

applicant, who is original plaintiff had filed the said suit for recovery of amount. The suit was decreed and the defendant i.e. the present respondent was directed to pay amount of Rs.3,33,700/- to the applicant, together with interest @ 6% per annum. The said decree has been reversed by the First Appellate Court. It will not be out of place to mention here that the Second Appeal has been admitted by this Court on 21.01.2019. It has been stated that at the stage of first appeal, the present respondent had deposited certain amount in pursuance to the orders passed by the First Appellate Court and thereafter the applicant has withdrawn that amount and after allowing the appeal and dismissal of the suit, proceedings have been taken up to recover the said amount, which was withdrawn by him. Now, it is submitted on behalf of the applicant that since the Second Appeal has been admitted, there should be stay to the said proceedings, which were taken up in pursuant to the application dated 06.08.2016 before the First Appellate Court.

3 The affidavit-in-reply has been filed by the present respondent stating that mere admission of the Second Appeal does not allow the applicant to retain the said amount. The Civil Application itself is not maintainable, as the applicant has no right to make any kind of such submission. The appeal filed by the present respondent before the

First Appellate Court has been allowed. The deposit of the said amount of Rs.75,000/- was in pursuant to the orders of the Court during the pendency of the First Appeal and when his appeal is allowed he is entitled to get refund of the said amount. It is also submitted that at the time of withdrawal, his say was not called nor he was given intimation, when the regular Court, before whom the said appeal was pending, was on leave. The application was moved before In-charge Court and the In-charge Court has allowed withdrawal of the amount. When the appeal is allowed and the suit is dismissed, the applicant has been rightly asked to redeposit the said amount.

4 Heard both sides. In order to cut short, it can be said that both the learned Advocates have made their submissions in support of their respective contentions.

5 It is to be noted that a Special Civil Suit No.188/2010 was filed for recovery of amount. The suit was decreed. The defendant was directed to pay amount of Rs.3,33,700/- to the plaintiff together with interest @ 6% per annum, from the date of suit till realization of the entire decretal amount. The said decree was challenged in the appeal i.e. R.C.A. No.20/2014 by the original defendant. It came to be allowed. The Judgment and Decree passed in Special Civil Suit No.188/2010 was

set aside and the said suit was dismissed. Prior to that, it appears that at the time of issuing stay to the execution of the decree, that was passed in the Special Civil Suit No.188/2010, the First Appellate Court had given direction to the appellant before it to deposit certain amount. Since it was a money decree, there cannot be a blanket stay. It appears that only Rs.75,000/- were directed to be deposited. Accordingly, they were directed by the original defendant/applicant before the First Appellate Court and it appears that it has been withdrawn by the respondent. Now, we cannot go into the aspect, whether the withdrawal of the said amount was proper or not. For the simple reason, that even if for the sake of argument, it is accepted that the said withdrawal was behind the back of the present respondent, the respondent could have agitated by way of application itself, that the said withdrawal is not proper. That exercise has not been done. Now, the Second Appeal is admitted. The Judgment and Decree passed by the First Appellate Court is still subjudice before this Court. Under such circumstance, it is absolutely not necessary at this stage, to ask the present appellant to redeposit the said amount in the Court. That would be subject to the outcome of orders of this Court. Further, it is also not required to give a direction to the appellant to deposit the said amount in this Court. Since the amount has been withdrawn it is not necessary that there should be again recovery of the

said amount, when the matters are still pending.

6 Under such circumstance, the application is allowed. Further proceedings in terms of application dated 06.08.2016 before the learned Additional District Judge, Latur in R.C.A. No.20/2014 are hereby stayed till final hearing and disposal of the Second Appeal.

(Smt. Vibha Kankanwadi, J.)

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