IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 211 OF 2019
IN
FIRST APPEAL NO. 882 OF 2017

Mahalaxmi Resorts & Ors. .. Applicants

In the matter between
Mahalaxmi Resorts & Ors. .. Appellants

v/s.
Dr. Abhay Gangadhar Pagdhare .. Respondent

Mr. R.S. Apte, Senior Counsel a/w Mr. Vinay M. Bhate and Ms. Pinky M. Bhansali for the applicants
Mr. Yogita Deshmukh-Chitnis for the respondent

CORAM : A.S. OKA &
M.S. SANKLECHA, J.J.

DATED : 16th APRIL, 2019

P.C.

1. Heard the learned Senior Counsel appearing for the applicants and the learned Counsel appearing for the respondent.

2. The present application has been filed by the appellants in the First appeal. The respondent in this application is the respondent in the appeal. The challenge in the appeal is to a money decree passed by the Trial Court on 27th July, 2016. The appeal was admitted on 17th

November, 2017. In Civil Application No. 2477 of 2017 filed by the applicants seeking stay of execution of the impugned decree, on 28th November, 2017 following order was passed :-

> *"1. The execution of decree stands stayed subject to following conditions :-*
>
> *(a) The applicants shall deposit 50% of decretal amount in this Court within 8 weeks.*
>
> *(b) In respect of remaining 50% of the decretal amount the applicants shall furnish solvent security to the satisfaction of Registrar (Judicial) of this Court. Before accepting the solvent security Registrar shall hear the respondents.*
>
> *2. Civil Application stands disposed of. Costs in cause."*

3. Admittedly, the applicants failed to deposit 50% of the decretal amount and, therefore, the present application is filed on 7th January, 2019 seeking extension of time. As regards furnishing the solvent surety for remaining 50% of the decretal amount, the perusal of a report of the Registry shows that certain documents of title were tendered by the applicants to the Registrar (Judicial I) for acceptance of solvent surety. However, the said documents were not considered and 50% of the decretal amount has not been deposited by the applicants within the stipulated time.

4. Now, the applicant has deposited a banker's cheque dated 4th

January, 2019 for the amount of Rs.3,25,000/- representing 50% of the decretal amount. Perusal of the operative part of the decree shows that the applicants were directed to pay a sum of Rs.6.5 crores along with interest at the rate of 6% p.a. from the date of filing of the suit till the payment. As per the order dated 28th November, 2017, the applicants were required to deposit 50% of the decretal amount within a period of 8 weeks which will include 50% of the interest payable on the amount of Rs.6.5 crores. Thus, the amount of Rs.3.25 lakhs belatedly deposited by the applicants does not represent 50% of the decretal amount. If the applicants want indulgence to be shown by extending the time, the applicants will have to deposit 50% of the decretal amount as payable on 7th January, 2019 when the present application was filed. Only on depositing of the balance amount that the Registrar (Judicial I) can examine whether the security furnished by the applicants is adequate for securing 50% of the balance decretal amount due and payable as on 7th January, 2019.

5. As per the order dated 28th November, 2017, the amount of 50% of decretal amount was to be paid within eight weeks from the said date. There is a delay of more than one year in depositing the said amount.

6. The application is strongly objected to by the respondent. The learned Counsel appearing for the respondent submits that security cannot be accepted without giving an opportunity of being heard to the respondent.

7. Considering the fact that a banker's cheque as aforesaid has been deposited, we propose to show indulgence by extending the time. However, the applicants will have to be saddled with costs quantified at Rs.20,000/-.

8. If the applicants desire to furnish additional / proper security in terms of the order dated 28th November, 2017, the applicants are at liberty to do so within maximum period of six weeks from today.

9. Accordingly, we dispose of this application by passing following order :-

ORDER

(i) Time granted to the applicants to deposit 50% of the decretal amount as per the order dated 28th November, 2017 is finally extended by a period of six weeks from today, subject to condition of the applicants depositing 50% of the decretal amount (Rs.6.5 crores plus interest as directed) as on 7th January, 2019. Thus, the amount payable in addition to Rs.3.25 Crores shall be deposited within six weeks from today;

(ii) On the failure of the applicants to deposit the balance amount as aforesaid within a period of six weeks from today, the impugned decree will immediately become executable;

(iii) Only after deposit of the aforesaid amount, the Registrar (Judicial-I) will examine the documents furnished by the applicants and will ascertain whether the applicants have furnished solvent security for remaining 50% of the decretal amount payable as on 7th January, 2019 to his satisfaction. Before examining the documents, the Registrar (Judicial-I) will satisfy himself that compliance with the aforesaid directions regarding deposit is made by the applicants. If he is satisfied that the compliance is not made, then there will not be any occasion to accept the solvent security as the stay shall stands automatically vacated;

(iv) Before accepting solvent security in terms of the order dated 28th November, 2017 as modified by this order, the Registrar (Judicial-

I) will give an opportunity of being heard to the respondent. The respondent will be entitled to inspect the documents produced by the applicants; and

(v) The applicants shall furnish solvent surety to the satisfaction of the Registrar (Judicial-I) within a maximum period of 3 months from the date on which the balance amount as aforesaid is deposited by the applicants. If the applicants fail to furnish solvent surety to the satisfaction of the Registrar (Judicial-I) within the stipulated period of 3 months, the stay shall stand vacated without further reference to the Court, notwithstanding the fact that the Applicants deposit the balance amount within the stipulated time;

(vi) The applicants are directed to pay costs quantified at Rs.20,000/- to the respondent within a period of four weeks from the date on which this order is uploaded. Payment of costs will be condition precedent.

(M.S. SANKLECHA, J.) **(A. S. OKA, J.)**