

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 2045 OF 2019
IN
FIRST APPEAL (ST) No. 1992 OF 2019

The Bombay Electric Supply
and Transport Undertaking ...Applicant

Vs.

Smt. Roshan, w/o. Sam K. Dastoor
and Anr. ...Respondents

Mr. Arsh Mishra i/b. M.V. Kini & Co. for Applicant

CORAM: K.K. TATED, J.

DATED : JUNE 19, 2019

P.C. :

1. Heard learned counsel Mr. Arsh Mishra for the Applicant
2. By this civil application, the Applicant-Original Defendant is seeking stay of the operation and implementation of the judgment and decree dated 5th May, 2017 passed by the Bombay City Civil Court at Bombay in Suit No.7703 of 1998 (High Court Suit No. 695 of 1998), directing the Applicant to pay sum of Rs.55,943/- with interest @ 12%p.a. from January, 1995 till realization and further sum of Rs.1,81,534.76 along with interest @ 12% p.a. from February, 1995 till realization.
3. Learned counsel for the Applicant submits that the trial court failed to consider the fact that the Respondent – Original Plaintiff was using the electricity for commercial purpose and whereas the meter was

taken for residential purpose. Hence, he submits that the Applicant has good chance of success in the present proceedings. He submits that if the entire amount is recovered by the Respondent -Original Plaintiff by filing execution application, then nothing will survive in the present First Appeal. He submits that pending the hearing and final disposal of the First Appeal, the operation, implementation of the judgment and decree be stayed.

4. Heard learned counsel for the Applicant at length. It is to be noted that there is a money decree against the Applicant. Considering the fact, the Applicant have to deposit the entire awarded amount in this Court.

5. Hence, following order:

(a) Civil Application is allowed in terms of prayer clause (a) on a condition that the Applicant to deposit the entire awarded amount along with interest on or before 26th July, 2019 before this Court, failing which civil application shall stand dismissed without referring back to the Court, which reads thus:

“(a) That pending the hearing and final disposal of the Appeal, the operation, effect, implementation and execution of the Judgment and Decree dated 5/05/2017 passed by the Ld. Judge in City Civil Court at Mumbai in Suit No. 7703 of 1998 be stayed.”

(b) The Respondent/Original Plaintiff, if they so desire, to prefer appropriate application for withdrawal of the amount and that to be decided on its own merits.

- (c) Civil Application stands disposed of accordingly.
- (d) No order as to costs.

(K. K. TATED, J.)