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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL APPLICATION NO. 1081 OF 2019

IN

FIRST APPEAL NO. 408 OF 2018

Kerala Roadways Pvt. Ltd.

.. Applicant

In the matter between

Kerala Roadways Pvt. Ltd.

.. Appellant

Vs.

M/s. Exclusive Trading Co. Pvt. Ltd.

.. Respondent

Mr. Rafique P. I/b O. A. Das for the Applicant.

Mr. Saket Mone and Mr. Omprakash Vaishnav I/b Sumeet Tyagi for the Respondent.

CORAM : K. K. TATED, J.

DATE : 20th MARCH, 2019.

P. C. :

1. Heard learned Counsel for the parties.
2. By this Civil Application, the Applicant/original Defendant is seeking stay to the operation and implementation of the Judgment and decree dated 06.12.2017 passed by the Bombay City Civil Court, Bombay in Summary Suit No. 6646 of 2004 holding that the Respondent/Plaintiff is entitled sum of Rs.2,78,017/- with interest @ 9% from 14.02.2002 till realization.
3. Learned Counsel Shri Rafique for the Applicant submits that, the Respondent/original Plaintiff has already filed Execution Application for recovery of amount. He further submits that at the time of passing the impugned Judgment and decree, the Trial Court failed to consider the relevant facts. He submits that even though Plaintiffs received sum of

Rs.1,40,000/-, the Trial Court had not considered the same while passing the impugned decree. In support of this, the learned Counsel relies on letter dated 23.12.2002 from Unique Rainbow Pvt. Ltd. In view of this fact, learned Counsel for the Applicant submits that, instead of directing the Defendant to deposit the entire decretal amount, this Court be please to consider the letter dated 23.12.2002 which shows that the Respondent/Plaintiff received sum of Rs.1,40,000/-.

4. On the other hand, learned Counsel on behalf of Respondent/Plaintiff submit that though the impugned Judgment and decree passed by the Trial Court dated 06.12.2017, till today the Applicant-Defendant failed and neglected to deposit the said amount in the Trial Court. Hence, the Applicant filed the Execution Application. He submits that the attachment order is already issued and they attached the property. He further submits that at the time of passing impugned decree, trial Court already considered the objection of Appellant about the amount of Rs.1,40,000/-. Therefore, there is no question of granting any concession to the Applicant at the time of depositing the decretal amount.

4. I hear both sides. In any case, this is money decree passed by the Trial Court. For the purpose of stay of money decree, the Applicant have to deposit the entire decretal amount along with interest.

5. Considering the submission made by the learned Counsel for the Applicant and the reasons given by the Trial Court, I am satisfied that the Applicant has made out case of allowing the Civil Application but at the

same time, they have to deposit the entire decretal amount, if any, in the Trial Court within six weeks from today. Hence, the following order:

- (i) Operation and implementation of the Judgment and decree dated 06.12.2017 passed by the Bombay City Civil Court in Summary Suit No. 6646 of 2004 is stayed on condition that the Applicant to deposit the entire decretal amount with interest, if any, in Trial Court within six weeks from today, failing which, Civil Application shall stand dismissed without reference to this Court.
- (ii) If the amount is deposited within stipulated time, the Trial Court is directed to invest the said amount in fixed deposit in any nationalized Bank initially for a period of one year and to be continued till further orders.
- (iii) Liberty granted to the Respondent-original Plaintiff, if they so desire, to prefer an appropriate application for withdrawal of amount which shall be decided on its own merits.
- (iv) The Civil Application stands disposed of accordingly.
- (v) No order as to costs.

[K. K. TATED, J.]