

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Application No.2146/2019

in

First Appeal (ST) 16244/2019

Office Notes, Office
Memoranda of Coram,
appearances, Court's
orders or directions
and Registrar's orders

Court's or Judge's orders.

Mr. Mayur Khandeparkar I/b. E. A. Sasi for
the Applicant

Mrs. Nupur J. Mukherjee with Arman
Grewal I/b. M/s. N. N. Vaishnava & Co. for
the Respondent

CORAM : K.K.TATED,J.

DATED : JUNE 18, 2019

P.C.

1 Heard. By this Civil Application, the Applicant - Defendant is seeking stay to the operation and implementation of the judgment and decree dated 25.03.2019 passed by the learned Judge, Bombay City Civil Court at Mumbai in Summary Suit No.7549/2006 (H.C.Suit No.3261/2006).

2 The learned counsel for the Applicant submits that in the present proceedings they have already deposited sum of Rs.4,62,000/- in the Registry as per the order passed by this court in Appeal No.336 of 2004.

3 The learned counsel for the Applicant submits that in the present proceedings the Respondent - Plaintiff has filed the said suit for recovery of sum of Rs.4,62,000/- with interest and costs. He submits that the Trial Court has decreed the said suit. Hence, the present appeal.

4 The learned counsel for the Applicant submits that in view of Order 41 Rule 3 proviso (Bombay Amendment) it is not necessary to deposit the entire decretal amount if the Applicant satisfies that an arguable case is made out by them. He submits that in the present proceedings the Respondent - Plaintiff has filed the said suit for recovery of the amount on the basis that they had handed over 700 gm gold to the Applicant and same was not returned. He submits that, in support of this contention, the Respondent - Plaintiff has relied on tax invoice dated 01.09.2005 for Rs.4,62,000/-. He submits that bare reading of the said tax invoice shows that there is a blank column at customer's signature. That shows that the same was not delivered to the Applicants. Therefore, the Trial Court has failed to relied on the said tax invoice. He submits that the Trial Court has also relied

on writing dated 27.09.2005 of the Applicant in which the Applicant has stated that he will return the 700 gms gold to the Respondent Plaintiff. He submits that the Trial Court has failed to consider the fact that the said writing was procured by the Respondent, when the Applicant was in police custody. The learned counsel for the Applicant submits that apart from these facts, the Respondent Plaintiff himself has admitted in cross-examination on 10.06.2016 in para 22 that he received the sum of Rs.60000/-. He relies on paragraph 22, which reads thus:

“Police have recovered gold from Aurangabad in connection with my report lodged to police. I do not know whether police had recovered gold or cash. I have received black 60000/- in connection with the report lodged to police. It is not true to say that in my presence on 10.12.2005, two police constable and IO threatened to the Defendant at Aurangabad. It is not true to say that I called Defendant in my room and inspector gave threat to Defendant and then I obtained writings vide Exhibit-9 in the room of said hotel at Aurangabad. It is not true to say the due to my influence, police authorities had taken Defendant to Aurangabad for obtaining the writings from him.”

5 The learned counsel for the Applicant submits that this fact is not considered by

the Trial Court while passing the impugned judgment and decree. Hence, this Hon'ble Court be pleased to stay the operation and implementation of the impugned judgment and decree and also restrain the Respondent Plaintiff from withdrawing the amount deposited by the Applicant in the Registry. He submits that if the Civil Application is not allowed, irreparable loss will be caused to the Applicant.

6 On the other hand, the learned counsel for the Respondent - Plaintiff has vehemently opposed the Civil Application. She submits that after considering the evidence on record, the Trial Court has rightly held that the Respondent is entitled to sum of Rs.4,62,000/- with interest @ 18% p.a. She submits that this being a money decree, there is no question of granting any blanket stay in favour of the Applicant.

7 The learned counsel for the Respondent submits that the Applicant is liable to pay sum of Rs.15,08,430/-. She submits that the principal amount is Rs.4,02,000/- and interest for 12 years and 7 months @ 18% p.a. comes to Rs.10,46,430/-. Out of the said amount the Applicant has already been deposited

Rs.4,62,000/- in the Registry and the said amount has been invested by the Trial Court. Therefore, the Applicant may be directed to deposit the entire decretal amount after adjusting the amount already deposited by them and allow the Respondent Plaintiff to withdraw the said amount.

7 Heard both sides at length. It is to be noted that Under Order 41 Rule 3 (proviso to Bombay Amendment) clearly shows that if court satisfies, then only the blanket stay can be granted. In the present proceedings the Applicant himself has admitted in letter dated 27.09.2005 that he is ready to return the said gold of 700 gm to the Respondent. Apart from that, after considering the evidence on record, the Trial Court has held that the Applicant is liable to pay sum of Rs.4,62,000/- to the Respondent - Plaintiff with interest @ 18% p.a. This being a money decree, there is no question of blanket stay in favour of the Applicant.

8 Hence, following order is passed:

a. The operation and implementation of the impugned judgment and decree dated 25.03.2019 passed by the learned Judge, Bombay City Civil Court at Mumbai in

Summary Suit No.7549/2006 (H.C.Suit No.3261/2006) is stayed till hearing and final disposal of the First Appeal.

b. The Applicant to deposit the entire decretal amount including interest after adjusting the amount already deposited by him in the Trial Court on or before 06.07.2019, failing which the Civil Application shall stand dismissed without further reference to the court.

c. If amount is deposited within stipulated time as stated hereinabove the Trial Court is directed to invest the same in a fixed deposit account of any Nationalized Bank, initially for a period of one year and same shall be renewed from time to time till hearing and final disposal of the appeal.

d. Liberty granted to the Respondent to prefer an appropriate Application for withdrawal of the decretal amount, if they so desire, which will be decided on its own merits

e. The Civil Application stands disposed of accordingly.

f. The Appellant is directed to remove all office objections in the First Appeal on or before 05.07.2019, failing which the First Appeal shall stand dismissed without further reference to the court.

g. If all Office objections are removed within stipulated time as stated hereinabove, Office is directed to place the matter on board on 08.07.2019, for admission.

(K.K.TATED, J.)