

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Application No. 3500/2015
in
First Appeal No. 313/2015

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
Mr. M. L. Patil for the Applicant Mr. Faisal Sayyed /b. Manilal Kher Ambalal & Co. for Respondent No.1.	

CORAM : K.K.TATED, J.
DATED : APRIL 25, 2019

P.C.

Heard. By this Civil Application, the Applicant – Defendant is seeking stay to the operation and implementation of the impugned judgment and decree dated 27.11.2014 passed by the Civil Judge, Senior Division, Nasik in Special Civil Suit No. 568/2011.

2 The learned counsel for the Applicant submits that in the present proceedings, the Respondent Plaintiff filed the suit in the Trial Court for declaration and recovery of amount. He submits that in the present proceedings, the Respondent – Plaintiff

brought goods in the territorial jurisdiction of the Applicant without payment of octroi. Hence, the Applicant called upon the Plaintiff to pay octroi plus 10 times penalty and same was recovered by them. Thereafter, the Plaintiff filed the present suit for refund of the said penalty.

3 The learned counsel for the Applicant submits that the Trial Court has failed to consider the fact that the suit itself was not maintainable therefore, there is no question of refund the said amount to the Plaintiff . In view of these facts, the learned counsel for the Applicant submits that they have good chance of success in the matter. Hence, pending the hearing and final disposal of the First Appeal, this Hon'ble Court be pleased to stay the operation and implementation of the impugned judgment and decree.

4 On the other hand, the learned counsel for the Respondent - Plaintiff has vehemently opposed the Civil Application. He submits that in the present proceedings, the Applicant is challenging the money decree. He submits that the Trial Court, by impugned judgment and decree directed to

refund the amount of Rs.94,51,290/- together with interest @ 6% p.a. from the date of suit till its realisation. He submits that whether the suit was maintainable or not may be decided at the time of final hearing. This being a money decree, there is no question of granting any blanket stay. Hence, the Applicant may be directed to deposit the entire awarded amount in the Trial Court. Whether the suit was maintainable or not may be decided at the time of final hearing.

5 Considering these facts and this being a money decree, following order is passed:

a. The operation and implementation of the impugned judgment and decree dated 27.11.2014 passed by the Civil Judge, Senior Division, Nasik in Special Civil Suit No. 568/2011 is stayed, subject to the Applicant depositing the entire decretal amount in the Trial Court on or before 29.06.2019, failing which the Civil Application shall stand dismissed without further reference to the court.

b. The Trial Court is directed to invest the decretal amount 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.

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

d. Civil application stands disposed off accordingly.

(K.K.TATED, J.)