

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

**CIVIL APPLICATION st. NO.20937 OF 2019
IN
FIRST APPEAL NO.1571 OF 2010**

Jyoti Structures Ltd.

... Applicant/
Appellant

Vs

Simplex Project Ltd. & Ors.

... Respondents

Mr.Ranit Basu with Sinha Shrey & Vishesh Srivastav for the
respondent/decreeholder

**CORAM: AKIL KURESHI &
S.J. KATHAWALLA, JJ.**

DATED: AUGUST 2, 2019

P.C.:

1. Leave granted to amend by correcting the date in para 14 of the Civil Application. Amendments to be carried out forthwith.
2. The learned Counsel for the applicant undertakes to remove the office objections in this Civil Application within a week from today. Undertaking accepted.
3. This Civil Application is filed on behalf of one Jyoti Structures Limited, who is the appellant in the First Appeal No.1571 of 2010.

The appellant had challenged the decree dated 13.4.2010 requiring the appellant to pay a sum of Rs.1,10,42,200/- to the respondents - the original plaintiffs. Under the orders of the Court, the appellant company deposited the said decretal sum of Rs.1,10,42,200/- on 25.1.2011. On 2.2.2015, the Court passed an order permitting the respondents – original plaintiffs to withdraw the said sum providing solvent security. The respondents could not offer such security and, therefore, the amount remained with the Court.

4. On 19.11.2018, the First Appeal came to be dismissed for default. It is pointed out to us that in the meantime, the company's financial position had become weak. The company was before the National Company Law Tribunal. Insolvency petition was admitted on 4.7.2017, pursuant to which, according to the Counsel for the applicant, all pending proceedings would be suspended.

5. The respondents – original plaintiffs after waiting for a sufficient period and finding that the company had not sought restoration of the First Appeal, applied for withdrawal of the decretal amount deposited by the company before the Court. On 19.7.2019, this Court allowed such application.

6. Before the sum could be withdrawn by the respondents, this application came to be filed seeking restoration of the First Appeal. Consequently, the appellant also requests for recall of the order dated 19.7.2019 passed in the Civil Application filed by the respondents.

7. Having heard the learned Counsel for the parties, we are not inclined to enter into the legal question whether in view of admission of the Insolvency petition by the National Company Law Tribunal on 4.7.2017, the appeal of the appellant company could have been proceeded further or not. This is so for the simple reason that independent of the same, it was always the right of the appellant – company to seek restoration by citing proper reasons. As noted, the principal decretal sum was in excess of Rs.1.10 crores. The appeal was not decided on merits but was dismissed for want of prosecution. The Courts always lean in favour of deciding the dispute between the parties on merits. In larger interest of justice, therefore, the First Appeal No.1571 of 2010 is restored to file. Consequently, the order dated 19.7.2019 giving liberty to the respondents to withdraw the sum stands recalled.

8. At the instance of the Counsel for the respondents, it is clarified that if the respondents provide unconditional bank guarantee, to the extent of full amount for which withdrawal is requested, of any nationalised bank to the satisfaction of the Registrar (Judicial I), the respondents would be allowed to withdraw the said sum with accrued interest.

9. With these observations and directions, the Civil Application is disposed of.

(S.J. KATHAWALLA, J.)

(AKIL KURESHI, J.)