

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
Civil Application No.3367/2014

in

First Appeal No.742/2015

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
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Mr. Feroze Patel a/w. Ms. Aanchal Jaswani I/b. markand Gandhi for the Appellant.

CORAM : K.K.TATED, J.
DATED : JUNE 24, 2019

P.C.

1 Heard. By this Civil Application the Applicant - Defendant seeks stay to the the operation and implementation of the impugned judgment and decree dated 16.09.2013 passed by the Bombay City Civil Court in Suit No.7450/1983 holding that the Respondent - Plaintiffs are entitled to recover the sum of Rs.4,70,726.88 from the Appellant - Defendant as and by way of compensation for the breach of the contract together with interest @ 6% p.a. from the date of suit till realization.

2 The learned counsel for the Applicant submits that the Trial Court has erred in coming to the conclusion that the suit

filed by the Plaintiff was within time. He submits that if the limitation is calculated from first date of cause of action the suit is barred. These facts are not considered by the Trial Court. Hence, this Hon'ble Court be pleased to stay the the operation and implementation of the impugned judgment and order till hearing and final disposal of the appeal.

3 It is to be noted that in the present proceedings the Trial Court has passed the money decree against the Applicant. Whether the suit was within time or not would be decided at the time of final hearing of the First Appeal. At present, considering the reasons given by the Trial Court with regard to the issue i.e. with reference that the prima facie the suit was within time, I pass the following order.

a. The Civil Application is allowed in terms of prayer clause (a) subject to the Applicant depositing the entire awarded amount along with interest and costs in the Trial Court within eight weeks from today, failing which the Civil Application shall stand dismissed without further

reference to the court. Prayer clause (a) reads thus

“(a) Pending the hearing and final disposal of the present First Appeal and Civil Application No.3548/2010 execution, enforcement and operation of the decree dated 13.02.2009 passed in S.C.Suit No.7450/1983 be stayed.”

b. If the amount is deposited within stipulated time as stated hereinabove, the Tribunal 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 further orders.

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

d. The learned counsel for the Applicant is directed to inform and forward a copy of this order to the Respondent original Plaintiff and file Affidavit of Service.

e. The Civil Application stands disposed of accordingly. No order as to costs.

(K.K.TATED, J.)