

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Application No.64/2019
in
First Appeal No. 359/2019

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
Mr. Kamlesh Mali a/w. Anuj Jhavri, Sayali Phansikar I/b. Satish Kumbhar for the Applicant Mr. Prakash Ganwani I/b. B. G. Saraf for the Respondent	

CORAM : K.K.TATED, J.
DATED : APRIL, 12, 2019

P.C.

Heard. By this Civil Application, the Plaintiff seeks permission to withdraw the amount deposited by the Appellant - Defendant in the Registry of this court.

2 The learned counsel for the Applicant submits that in the present proceedings, the Applicant - Plaintiff No.1 had filed Summary Suit No.6080/2007, which was decreed by the Trial Court on 24.11.2016 and directed the Defendant to pay sum of Rs.37,17,754/- along with interest @ 9% p.a. on the principal amount of Rs.32,92,500/-. The learned counsel for the Applicant

submits that as the Defendant has failed and neglected to comply with the judgment and decree dated 24.11.2016 passed by the Trial Court, they filed Execution Application No.281/2017. He submits that in that Execution Application they made an Application for warrant of attachment of immovable property in possession of the Defendant under Order 21 Rule 54 of the Code of Civil Procedure, 1908 for recovery of the sum of Rs.65,06,497/-. He submits that the said attachment order was executed and the Defendants' immovable property and movable properties were attached. Thereafter, the Defendant moved this court for stay of the judgment and decree passed by the Trial Court. He submits that this court, by order dated 12.02.2018 in Civil Application No.595/2018 directed the Defendant to deposit a sum of Rs.32,92,500/- with interest. He submits that the said amount is deposited by the Defendant in this court.

3 The learned counsel for the Applicant submits that the Applicant being - Plaintiff who succeeded in the summary suit, may be permitted to withdraw the said amount

unconditionally, as the First Appeal will take its own time. In any case, there is an attachment order to the tune of Rs.65,60,497/-. Whereas, this court has directed the Defendant to deposit only Rs.32,92,500/- i.e. less than 50%. Therefore, the Civil Application may be allowed.

4 On the other hand, the learned counsel for the Defendant has vehemently opposed the Civil Application. He submits that if the entire amount is withdrawn by the Applicant and in case the Defendant succeeds in the present appeal, then it will be difficult for them to recover the said amount from the Applicant. He submits that the Applicants, on their own specifically made the averments in the Civil Application that they are facing financial difficulties. Considering these facts, there is no question of allowing the Civil Application. He submits that if this court comes to the conclusion that the Applicants are entitled to withdraw the amount, then in that case, the Applicant may be directed to furnish bank guarantee and/or solvent security to the satisfaction of this court.

5 Heard. It is to be noted that in the present proceedings a money decree is passed against the Defendant. The total amount comes to the tune of 65,06,497/-, with interest as per the attachment warrant issued by the executing court dated 07.10.2017. Instead of depositing the entire amount, this court, directed the Defendant to deposit only Rs.32,92,500/-.

6 Considering these facts, I am of the opinion that the Applicant has made out a case for allowing them to withdraw the entire amount without furnishing any security, but subject to outcome of the First Appeal.

7 Hence, the following order is passed:

a. The Applicant is permitted to withdraw the entire amount deposited by the Defendant in the Registry of this court with accrued interest, if any, without furnishing any security but subject to outcome of the First Appeal.

b. As the First Appeal has already been admitted, hearing of the First Appeal is expedited.

c. The Appellant is directed to file paper book in the Registry within six months from today with copy to other side.

d. Call R & P.

e. Liberty granted to the Defendant to move this court for fixing the early date of hearing, after the paper book is filed and R & P is received.

f. Civil Application stands disposed of accordingly.

g. No order as to costs.

(K.K.TATED, J.)