

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 1059/2019
(WAMAN PANDURANG DHANDE **VERSUS** RAMESH GANGADHAR RAMTEKE)

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

Court's or Judge's orders

Shri A.M. Ghare, counsel for petitioner.

CORAM : A.S. CHANDURKAR, J.
DATE : APRIL 09, 2019.

The respondent has not chosen to enter appearance despite service of notice to him. There has been no appearance on his behalf on last three dates. Accordingly, the learned counsel for the petitioner has been heard and the matter is taken up for final adjudication.

The petitioner is the original defendant against whom an *ex-parte* decree for refund of earnest amount has been passed. That decree is dated 23.09.2013. The petitioner made an application under provisions of Order IX Rule 13 of the Code of Civil Procedure, 1908 for setting aside the *ex-parte* decree. The trial Court by an order dated 07.07.2018 set aside the *ex-parte* decree on the condition that amount of Rupees Ten Lakhs would be deposited by the petitioner within a period of one month. The amount was not so deposited and hence an application for extension of time to deposit that amount was moved. By the impugned order, the said application has been rejected.

This Court with a view to test the *bona fides* of the petitioner had on 15.03.2019 directed the petitioner to deposit the amount of Rupees Ten Lakhs with the trial Court. That amount is shown to have been deposited as per the receipt dated 05.04.2019. Considering the fact that the trial Court had set aside the *ex-parte* decree conditionally and that condition now stands complied with, it would be in the interest of justice to permit the proceedings to proceed further in terms of the order passed in M.J.C. No.69 of 2015. The respondent as stated above has not chosen to oppose the prayers as made in the present writ petition.

In that view of the matter, by directing the trial Court to treat the deposit of Rupees Ten Lakhs as made pursuant to the order dated 15.03.2019 as having been made in compliance with order passed in M.J.C. No.69 of 2015. The trial Court shall proceed with adjudication of Special Civil Suit No.934 of 2011 in accordance with law. The amount of Rupees Ten Lakhs as deposited shall be invested in Fixed Deposit.

The Writ Petition is allowed and disposed of in aforesaid terms. No costs.

JUDGE

APTE