

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.4770 OF 2020

- 1] Atul S/o Nemichand Dhadiwal
Age 45 years, Occu-Business,
R/o 2, Suraj Enclave,
Mahatma Nagar, Nasik.
- 2] Micro Vision Technologies
Siddhivinayak Row Housing Society,
Shivaji Nagar, Ozar, Tq. Niphad,
District Nashik
Through Proprietor,
Atul Nemichand Dhadiwal

.. PETITIONERS

Versus

- 1] Dhule Municipal Corporation
Dhule, Tq. & District Dhule,
Through it's Commissioner
- 2] The Commissioner
Dhule Municipal Corporation,
Tq. & District Dhule

.. RESPONDENTS

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Adv.Mr. Amit S.Deshpande for petitioners
Adv. Mr.Amol S. Sawant for respondents.

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CORAM : MANGESH S. PATIL, J.

DATE : 20.07.2020

PC. :-

Heard learned advocate Mr.Deshpande for the petitioner and the learned advocate Mr.Sawant for the respondents. Perused the papers including

the affidavit in reply filed on behalf of the respondents.

2] In a money Suit filed by the petitioners a final decree has been passed. Though the respondents have impugned the judgment and decree by preferring First Appeal, admittedly there is no stay granted to the execution of the final decree.

3] Pursuant to the directions of this Court in First Appeal No.3611/2011, the respondents had deposited an amount of Rs.95 lakhs. The petitioners were allowed to withdraw 75% of the amount pursuant to the order of this Court in Civil Application No.9072/2014 dated 14/11/2014.

4] By the impugned order, the executing Court has rejected the application of the petitioners seeking withdrawal of the remaining amount which stands deposited with it. Perusal of the order passed in Special Darkhast No.12/2020 by the learned Civil Judge, Senior Division reveals that without assigning cogent reasons, the request of the petitioner has been rejected for the simple reason that the First Appeal preferred by the respondents-judgment debtors is pending. Astonishingly though the learned Civil Judge seems to be alive to the trite principle that pendency of Appeal *per-se* does not amount to stay to the execution and without there being any such stay granted by the first appellate Court, the learned Civil Judge has rejected the application.

5] As is observed above, since the Final Decree has been put to execution and there is no stay to its execution granted by first appellate Court it would be just and proper to allow the petitioners/plaintiffs to withdraw the money which stands deposited in the executing Court subject to certain terms

and conditions which would secure the money.

6] The Writ Petition is allowed. The impugned order is quashed and set aside. The executing Court shall pass suitable order directing payment of money to the petitioners by furnishing appropriate security to its satisfaction

[MANGESH S. PATIL, J.]

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