

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

CIVIL APPLICATION NO. 14505 OF 2019
WITH
SECOND APPEAL NO. 760 OF 2018

M/S NEW MAHARASHTRA SAND SUPPLIERS THROUGH ITS
PROPRIETOR
VS
THE STATE OF MAHARASHTRA AND ORS

Mr. U.B. Bondar, Advocate for the applicant
Mr. P. M. Kulkarni, AGP for the respondent/State

CORAM : S. M. GAVHANE, J.

DATE : 20-01-2020

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. Applicant who is respondent in the second appeal has filed this application to permit it to withdraw amount of Rs. 41,62,200/- deposited in this court by the appellant in the appeal, in terms of prayer clause (B).

2. Mr. Bondar, learned counsel appearing for the applicant submitted that the applicant had deposited amount with the respondents to allow the applicant to excavate the required quantity of sand, but respondents did not grant permission to applicant to excavate the sand. Therefore, applicant filed Special Civil Suit No. 377 of 2011 for refund of amount deposited with the respondents. Said suit was decreed on 25-03-2015. Aggrieved by the decree respondents had filed appeal bearing RCA No. 327 of

2015 in the District Court, Ahmednagar and it was dismissed. Therefore, Second Appeal is filed by the original defendants/present respondents. In the second appeal this court had granted stay to the execution of decree passed by the trial court and confirmed by the appellate court on condition that appellant shall deposit amount of Rs. 42,48,400/- in this court within four weeks from the date of order, by order dated 01-08-2019. Respondents have deposited the amount of Rs. 41,62,200/- which is short amount according to the learned counsel appearing for the applicant. It is submitted that amount deposited is applicant's amount and therefore, same may be allowed to be withdrawn by the applicant in the light of prayer clause (B) of the application. Learned counsel appearing for the applicant submitted that the applicant had deposited amount of Rs. 42,48,400/- in 2011 and amount due to respondents is now four times of the said amount including interest.

3. Learned AGP appearing for the respondents who are appellants in the second appeal placed on record copy of letter dated 18-01-2020 addressed to him given by respondent No. 2 Tahasildar informing that there is no objection to transfer amount in the account of concerned.

4. I have carefully considered the submissions made by the learned counsel for the applicant and perused the decree passed by the trial court in favour of the applicant which is maintained by the appellate court. Since there appears no dispute regarding amount deposited with the respondents by the applicant

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and as the respondent No. 2 Tahasildar has no objection to allow the applicant to withdraw the amount deposited in this court when stay to the execution has been granted by this court, the applicant needs to be allowed to withdraw amount. Therefore, application is allowed in terms of prayer clause (B) subject to final decision of the appeal and further directions of this court about the amount allowed to be withdrawn by the applicant.

5. Interim relief, if any, operating to continue till further orders.

6. Place the appeal for admission on 04-03-2020.

[S. M. GAVHANE, J.]