

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 8760 OF 2019

Shivajirao Jaysingrao Patil

.Petitioner

Vs.

Vijaykumar Pitambar Bile

.Respondent

Mr. M. B. Deshmukh, Advocate, for the Petitioner

Mr. R. S. Patil, Advocate, for the Respondent

CORAM : REVATI MOHITE DERE, J.

DATE : 20.02.2020

P. C.

. Heard learned counsel for the parties.

2. By this Petition, the Petitioner has impugned the order dated 14.02.2019 passed by the learned District Judge – 3, Islampur below Exh. 5 in R. C. A. No. 107 of 2018, only to the extent, that it directs the Petitioner to give Bank Guarantee of 50% of the decretal amount in addition to depositing 50% of the Principal amount.

3. Learned counsel for the Petitioner submits that while passing the impugned order, the Appellate Court had incorrectly recorded the submissions of the Respondent, that the Petitioner had admitted the transaction and that the challans of the transaction were proved. Learned counsel for the Petitioner submits that the said

submissions that have been recorded, were never advanced by the Respondent. He submits that to the contrary, the Petitioner had throughout denied any transaction with the Respondent. He further submits that as the Respondent had not proved the challans, the same were rightly not exhibited by the trial Court. He submits that in this situation, the question of depositing the entire decretal amount does not arise.

4. Learned counsel for the Respondent opposes the Petition.

5. Perused the papers and in particular, the impugned the order. The Respondent had filed a suit, being Special Civil Suit No. 6 of 2016 as against the Petitioner, for recovery of Rs. 8,47,921.88/- with interest thereon from the date of institution of the suit, till its realization. The Petitioner appeared in the said suit and filed his Written Statement. The Petitioner denied the claim of the Respondent, that there was any transaction between them. After considering the evidence on record, the trial Court decreed the suit in favour of the Respondent. Being aggrieved by the said Judgment and Decree passed by the trial Court, the Petitioner filed an Appeal in the Appellate Court i. e. the District Court. In the said Appeal, the Petitioner filed an Application (Exh. 5) under O. XLI, Rule 5(1) of the Code of Civil Procedure for staying of the execution of the Judgment and Decree dated 10.09.2018 passed by

the trial Court in Special Civil Suit No. 6 of 2016. The said Application was allowed by the trial Court vide order dated 14.02.2019. The said order reads thus :-

“

ORDER

1. The application Exh. 5 is allowed, subject to depositing 50% of principle decretal amount and furnishing security in the nature of bank guarantee, in respect of remaining 50% of principle decretal amount in the Court, within one month from today.

2. On compliance as above, the execution of the judgment and decree dated 10.09.2018, in Special Civil Suit No. 06/2016, passed by the learned Civil Judge, S. D., Islampur, be stayed till decision of present appeal.

3. If the appellant / defendant failed to comply as above, present application automatically stands rejected.”

6. The Petitioner is aggrieved by the said order to the extent that it directs the Petitioner to give Bank Guarantee of 50% of the decretal amount. Learned counsel for the Petitioner, however, states that the Petitioner will deposit 50% of the decretal amount in the trial Court within six weeks from today, without prejudice to his rights and contentions in the Appeal.

7. Without going into the merits of the case, least it prejudices

either of the sides, during the hearing of the Appeal before the Appellate Court, the impugned order dated 14.02.2019 passed by the Appellate Court is modified to the extent, that the Petitioner shall now deposit only 50% of the decretal amount in the Appellate Court within six weeks from today. As far as direction to deposit 50% of the principal amount by furnishing Bank Guarantee is concerned, the said order to that extent, stands quashed. All contentions of all parties are kept open on merits. The Appellate Court to decide the Appeal on its own merits uninfluenced by the order passed in this Petition.

8. Accordingly, the Petition is disposed of.

All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)