

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Writ Petition No. 6939 of 2019

Vastu Vishwa Developers Pvt. Ltd. & Anr. Vs. M/s P.B. Deshmukh & Associates
& Ors.

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

Court's or Judge's orders

Dr. Anjan De, Advocate for the petitioners
Mr. B.N. Mohta & G.B. Purohit, Advocates for the respondent No.1

CORAM : MANISH PITALE, J.

DATED : FEBRUARY 04, 2020

By this writ petition, the petitioners (original defendants) have challenged order dated 27/08/2019, passed by the Adhoc District Judge – 2, Nagpur (Appellate Court), whereby stay of decree passed against the petitioners in Special Civil Suit No. 108/2012, has been granted subject to depositing the decretal amount of Rs.48,13,122/-. The petitioners have also prayed for setting aside the subsequent order dated 26/09/2019, passed by the Appellate Court, whereby an application for modification of aforesaid impugned order dated 27/08/2019, was dismissed.

2. The petitioners have filed an appeal before the Appellate Court challenging the judgment and decree passed in Spl. C.S. No.108/2012. While allowing the application for stay filed by the

petitioners, the Appellate Court imposed the aforesaid condition by recording that the petitioners had shown their readiness to deposit the decretal amount and further observing that since the decree passed by the Trial Court was money decree, unless and until decretal amount is deposited in the said Court stay could not be granted.

3. The learned counsel appearing for the petitioners submitted that the aforesaid observation made by the Appellate Court was in the teeth of Order XLI Rule 1(3) (Bombay Amendment) of the Code of Civil Procedure (CPC). It was emphasised that under the aforesaid Bombay Amendment, a proviso was added, which provides that the Court may even dispense with the deposit of amount or furnishing security for granting stay, where it deems fit to do so for sufficient cause. On this basis, it was contended that the approach of the Court below was erroneous. It was further submitted that an application for modification was also wrongly rejected, because the petitioners had never shown readiness to deposit decretal amount as recorded in impugned order dated 27/08/2019. The learned counsel also placed reliance on the judgment of the Hon'ble Supreme Court in the case of **Sihor Nagar Palika Bureau Vs. Bhabhlubhai Virabhai and Co. 2005 (4) SCC 1**, wherein it has been laid down by the Hon'ble Supreme Court that the Appellate Court has discretion to impose appropriate

conditions while exercising powers under Order XLI 1(3) Read with Rule 5 of the CPC.

4. On the other hand, the learned counsel appearing for the respondents submitted that the law as laid down by the Hon'ble Supreme Court specifically provided that appropriate conditions could be imposed by the Appellate Court for granting stay of the decree, particularly if it was a money decree. It was further submitted that the Appellate Court could have permitted withdrawal of amount that stood deposited by the appellant. On this basis, it was submitted that the writ petition deserved to be dismissed.

5. Before considering the contentions raised on behalf of rival parties, a significant development in the present case is that during pendency of the present writ petition, upon order passed by this Court to examine the bonafide of the petitioners, admittedly, the petitioners deposited an amount of Rs.30,00,000/- with the Executing Court.

6. A perusal of the Bombay Amendment to Order XLI Rule 1(3) of the CPC, indeed shows that the emphatic observation made by the Appellate Court in paragraph No.3 of the impugned order is not justified. It is not as if there is no discretion with the Appellate Court to grant stay to even a money decree upon imposing appropriate conditions or in appropriate

cases even by dispensing with requirements of deposit of decretal amount. To that extent the impugned order appears to be erroneous. At the same time, in the facts and circumstances of the present case, since the petitioners have indeed deposited Rs.30,00,000/- with the Executing Court during pendency of the present writ petition, deposit of such an amount can be taken into consideration as a condition for confirming interim stay granted by the Appellate Court. The impugned order can appropriately be modified.

7. In so far as the contention raised on behalf of the respondents that they should be permitted to withdraw the amount so deposited by the petitioners, it would in the interest of justice that the proceedings before the Appellate Court are expedited so that the appeal is itself decided on merits and the disbursal of the amount will be contingent upon decision on merits.

8. In view of above, the writ petition is disposed of as follows :

A) By taking note of deposit of Rs.30,00,000/- by the petitioners before the Executing Court, impugned order dated 27/08/2019, passed by the Appellate Court is modified and it is held that upon such deposit of amount by the petitioners, as a condition for grant of stay, the interim stay granted by the Appellate Court by the impugned order is confirmed.

- B) The amount deposited by the petitioners before the Appellate Court shall be invested in fixed deposit in a nationalized bank.
- C) The petitioners are directed to file private paper book before the Appellate Court within three weeks from today to facilitate immediate final hearing of the appeal.
- D) The Appellate Court is directed to consider and dispose of the pending appeal on merits as expeditiously as possible and in any case on or before **30th April 2020.**
- E) The writ petition is disposed of in above terms.

JUDGE