

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.5297 OF 2021
IN SAST/15375/20219
WITH
CIVIL APPLICATION NO.5298 OF 2021
IN SAST/15375/2019

STATE BANK OF INDIA

VERSUS

FAHMIDA ANSARI W/O MOHD. SIRAJUDDIN ANSARI AND OTHERS

...

Mr. A.D. Gade, Advocate for the applicant

Mr. P.N. Sonpethkar, Advocate for respondent Nos.1 to 3

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CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 15th JULY, 2021.

PRONOUNCED ON : 20th JULY, 2021.

ORDER :

1 Civil Application No.5297 of 2021 has been filed by the applicant-appellant for praying issuance of appropriate directions to the office of this Court to accept fresh Demand Draft towards decretal amount as per order dated 18.02.2020, passed in Civil Application No.7208 of 2019 by this Court and Civil Application No.5298 of 2021 has been filed for stay.

2 Heard learned Advocate Mr. A.D. Gade for the applicant and

learned Advocate Mr. P.N. Sonpethkar for respondent Nos.1 to 3.

3 Before considering the submissions, a fact is required to be placed on record that the applicant-Bank has filed the Second Appeal challenging the Judgment and Decree dated 23.10.2018, passed by learned District Judge-2, Aurangabad, in Regular Civil Appeal No.26/2016, thereby allowing the appeal with proportionate costs but directing the appellant-Bank to pay the amount of Rs.6,26,250 to the plaintiffs with interest @ 9% per annum from the date of deposit i.e. 19.07.2008. Present applicant-Bank had filed Civil Application No.7207 of 2019 before this Court for condonation of delay in filing the appeal. That came to be allowed, subject to deposit of costs of Rs.15,000/- to the respondents. Separate application was also filed i.e. Civil Application No.7208 of 2019 for stay to the impugned Decree, which also came to be allowed, however, conditional. It was directed that the decree would be stayed only on the condition that the applicant-appellant would deposit the entire decretal amount, in this Court, within a period of four weeks. It was also stated that if the deposit is not made within the said period, then that order would be recalled.

4 It is further a fact, which is apparent from the documents with this application, that on 17.03.2020 the learned Advocate appearing for the applicant-appellant by two separate letters gave two different Demand

Drafts; one was for Rs.15,000/- i.e. towards cost amount and another was for Rs.6,26,250/-, which is the principal amount, as per the Decree passed by the First Appellate Court. Both the Demand Drafts appear to be returned to the Advocate for the applicant-appellant by the office of this Court stating that the Court had passed the order on 18.02.2020 and the Demand Drafts are presented on 17.03.2020, which is beyond the time, that was directed by this Court, as per the said order.

5 Learned Advocate for the applicant submits that after the return of said Demand Drafts, the Bank has changed the Advocate and in fact, there was no intentional delay on the part of the Bank to deposit the amount when that order was communicated belatedly by the concerned Advocate and due to COVID situation it was not possible to exchange the Demand Drafts. A statement has been made by the learned Advocate that the applicant-Bank is ready to deposit the entire decretal amount, and therefore, the time be extended.

6 Learned Advocate for respondent Nos.1 to 3 has filed affidavit-in-reply and taken objection that the application is not maintainable and the extension cannot be granted. However, later on he submitted that if the Bank is depositing the entire decretal amount, that means, the principal amount together with interest @ 9% per annum from 19.07.2008, then that amount

be allowed to be deposited, since the respondents are also interested in getting their money.

7 At the outset, it is to be noted that there was an attempt by the Bank to deposit the amount, however, it appears that due to the communication gap between the Bank and the earlier Advocate, the Demand Drafts were submitted beyond the period of four weeks, that was granted by this Court. The respondents are also interested in getting the money, and therefore, when the Demand Drafts, which were tendered but later on returned by this Court, were only on the ground that it was beyond the period of limitation, granted by this Court. The time can be extended, as it is part of the conditional order on the stay application. While granting stay, this Court has considered the submissions made, as to whether there is any kind of merit or not in the case and then the said conditional order has been passed. Therefore, it would be in the interest of justice to direct the applicant to deposit the decretal amount again, on certain conditions. Hence, following order.

ORDER

1 The time limit to deposit the costs amount as well as the decretal amount as per the order passed by this Court on 18.02.2020 is

hereby extended till 02.08.2021.

2 On that day the applicant should submit two Demand Drafts; one is for the costs of Rs.15,000/- and another should be in respect of entire decretal amount, that is, the principal amount of Rs.6,26,250/-, together with interest @ 9% per annum from 19.07.2008 till 02.08.2021.

3 Calculation Sheet should also be submitted along with the Demand Drafts and the copy of the calculation Sheet should also be given to the respondents, on that day.

4 In view of extension of time, the stay granted by this Court on 18.02.2020 is hereby extended till 02.08.2021.

5 In case of failure on the part of the applicant-appellant to deposit the amount, as aforesaid, the conditional stay would stand automatically vacated, without further reference to the Court.

6 In view of this order, both the Civil Applications stand disposed of.

(Smt. Vibha Kankanwadi, J.)