

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

WRIT PETITION NO.7191 OF 2021

Scaria Mathew Geevarghese Vergees
Age : 60 years, Occu: Business,
R/o. B-1, Jyoti Nagar, Aurangabad,
Tq. & Dist. Aurangabad.

... PETITIONER

[Org. defendant and appellant]

VERSUS

Kum. Priti D/o Madanlal Bora
Age : Major, Occu: Household,
R/o. SB Colony, Aurangabad
Tq. and Dist. Aurangabad

... RESPONDENT

[Org. Plaintiff and Respondent]

...

Advocate for Petitioner : Mr. Kulkarni Ashutosh S.
Advocate for respondent : Mr. U.P. Darak and Mr. P.N. Kalani

...

CORAM : MANGESH S. PATIL, J.

DATE : 18.11.2021

JUDGMENT :

Heard both the sides finally. Rule. At the request of the parties, the matter is being disposed of finally at the stage of admission.

2. The petitioner who is the original defendant suffering a money decree is aggrieved by the rejection of his Application (Exhibit-5) by the District Court in an Appeal preferred by him challenging the decree, thereby refusing to stay operation and execution of the decree under challenge under the provision of Order XLI Rule 5 of the Code of Civil Procedure.

3. Indeed, as has been observed in the impugned order, being a money decree it could not have been stayed without calling upon the petitioner to deposit the money under decree or insisting for some security as is required by Order XLI Rule 1 (3) of the Code of Civil Procedure.

4. However, one cannot comprehend as to how, instead of passing a suitable order calling upon the petitioner to comply with the provision contained under Order XLI Rule 1(3), the learned Judge has simply rejected the Application. The order therefore calls for interference being illegal one.

5. After hearing both the sides, it transpires that already the parties are before a criminal court in a proceeding under Section 138 of the Negotiable Instruments Act. The petitioner was convicted and he has challenged the conviction in an Appeal. As per the order passed in that Criminal Appeal, admittedly, he has furnished a bank guarantee to the tune of Rs.12,00,000/-. Besides, the petitioner has also deposited an amount of Rs.3,00,000/- in the executing court.

6. The decree under challenge is for payment of more than Rs.25 lakh with interest @ 18% p.a. with effect from 08.03.2011.

7. Considering all the aforementioned facts and circumstances, it would be appropriate to allow the Writ Petition and to direct the Appellate Court to allow the Application (Exhibit-5) with a direction to the petitioner to deposit a further amount of Rs.10,00,000/- and furnish a further solvent security to the tune of Rs.10,00,000/- before the executing court, both, within four weeks from today.

8. The Writ Petition is accordingly allowed in above terms and the Rule is made absolute.

(MANGESH S. PATIL, J.)