

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**903 CIVIL APPLICATION NO.10731 OF 2021
IN SA/724/2014**

SARJERAO VITHALRAO BHOITE
VERSUS
JANU BHAU LIMBKAR

...
Advocate for Applicant : Mr. Doke K. R. And Doke S. K.
Advocate for Respondent : Mr. Anjanwatikar (in SA)
...

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 06-10-2021.

ORDER :

1. The present application has been filed for withdrawal of amount of Rs.1 lakh deposited in this Court. Present applicant is the respondent in Second Appeal No.724 of 2014 and the original plaintiff. The original plaintiff had filed Special Civil Suit No.09 of 2005 for specific performance of the contract. It was decreed and only the prayer of return of earnest amount was granted. Prayer of specific performance was rejected. Thereafter, original defendant challenged the said decree in Regular Civil Appeal No.452 of 2014 which came to be dismissed by learned District Judge-1, Bhoom on 29-10-2014. Thereafter, the second appeal was filed which was dismissed by this Court on 23-08-2021 on the ground that no substantial questions of

law are arising in this case.

2. It appears that when the original defendant had filed Regular Civil Appeal No.452 of 2014 he had prayed for the stay to the execution of the decree passed by the Trial Court, however, that application was rejected and, therefore, the original defendant had filed Writ Petition No.8452 of 2013. By order dated 10-10-2013 he was directed to deposit amount of Rs.1 lakh and accordingly the said amount was deposited. However, in the writ petition further order was passed on 29-08-2017 stating that since the regular civil appeal itself has been disposed of the writ petition stands disposed of and the second appeal is filed and, therefore, the said amount of Rs.1 lakh be transferred/transmitted in the second appeal. Now the second appeal has also been dismissed.

3. Learned Advocate Mr. V. B. Anjanwatikar submits that his Vakalatnama was in the second appeal and since it has been disposed of, he no longer represents the respondent. He prays for issuing notice to the respondent. In fact it is not even necessary to issue notice to the respondents for the simple reason that the writ petition was filed by him challenging the rejection of an ad-interim order and by way of ad-interim stay to the execution of the decree

by the Trial Court this Court had directed the appellant/original defendant to deposit the said amount. Further, when on 29-08-2017 the said statement was made by the respondents that the regular civil appeal has also been decided, on that day also it appears that the learned Advocate for the petitioner was absent and on the statement made by the learned Advocate for the respondent, the writ petition was disposed of and the amount was directed to be transmitted to the second appeal. That means, the said amount was made subject to the decision in the second appeal and the petitioner therein. that is the appellant in the second appeal. had every knowledge about the said order. No step was taken by the appellant/petitioner against the said order. Therefore, when the second appeal has been disposed of, it is not necessary to here the respondent once again. The amount deposited in the writ petition and transmitted to this second appeal on 11-11-2013 / 04-01-2018 be given to the present applicant upon verification. Application stands disposed of accordingly.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-

GAWADE
VIRENDRA
J

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by GAWADE
VIRENDRA J
Date: 2021.10.07
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