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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4876 OF 2021

CHANDI B. RANA

....PETITIONER

V/s.

AAJAY SHYAM JAJODIA

.....RESPONDENT

Mr. Akshay Shukla i/b Adv. Kushal Shukla for the petitioner

CORAM : NITIN W. SAMBRE, J.

DATE: AUGUST 31, 2021.

P.C.:

1] Summary suit of the respondent-plaintiff came to be decreed pursuant to the procedure provided under Order XXXVII of the Code of Civil Procedure, 1908.

2] Petitioner-Defendant took out proceedings through notice of motion under Order XXXVII Rule 4 of Code of Civil Procedure, 1908 questioning the Decree claiming to have been passed without giving him an opportunity of hearing and also prayed for stay of the

execution.

3] Mr. Shukla, learned counsel appearing for the petitioner-judgment debtor would urge that since the Decree is passed without according appropriate opportunity to the petitioner-judgment debtor, execution is liable to be stayed subject to petitioner putting to certain reasonable conditions.

4] With the assistance, I have perused the order impugned passed on the notice of motion.

5] It appears that petitioner has not pressed his prayer for setting aside Ex-parte Decree dated 20/12/2018, however, he is seeking stay of the execution and implementation of the Decree.

6] This Court while considering the said prayer of the petitioner has called upon him to deposit the amount which is covered by the Decree to which the petitioner has shown his inability.

7] In view of above, once the Decree is not challenged, in my opinion, no illegality could be noticed in the order impugned. That being so, petition fails, stands dismissed.

8] However, this will not preclude the petitioner to approach before Executing Court seeking stay to the execution provided he deposits the decretal amount.

[NITIN W. SAMBRE, J.]