

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

**CIVIL APPLICATION NO. 1141 OF 2020
IN
SECOND APPEAL NO. 487 OF 2019**

Rajyog Traders
Through its owner & Proprietor
Manisha Kanhaiyalal Chopada
Through General Power of Attorney Holder
Kanhaiyalal Manikchand Chopda .. Applicant

Versus

Deshmukh Poultry Farm
Through its Proprietor
Shri Bhanudas Sundarbapu Deshmukh .. Respondent

Mr. Abhaykumar D. Ostwal, Advocate for the Applicant.
Mr. U. S. Malte, Advocate for Respondent.

CORAM : BHARAT P. DESHPANDE, J.

DATED : 26th AUGUST, 2022.

PER COURT:-

1. This is an application filed by the applicant/original respondent in the second appeal.
2. Heard Mr. Ostwal, learned counsel for the applicant and Mr. Malte, learned counsel for the respondent.
3. Vide order dated 21.08.2019 passed in Second Appeal No. 487 of 2019, this Court directed the present respondent/appellant to deposit an amount of Rs. 9,00,000/- (Rs. Nine Lakh only) on or before 17.09.2019 for

grant of stay to the warrant issued for recovery of the amount awarded in favour of the applicant by both the Courts below. Accordingly, an amount of Rs. 9,00,000/- (Rs. Nine Lakh only) was deposited in this Court on 13.09.2019.

4. Learned counsel for the applicant submits that the challenge in the present second appeal is against money decree and the total amount awarded by the learned Courts below is more than Rs. 20,00,000/- (Rs. Twenty Lakh only) including interest as on date. The appeal is pending for admission. The parties are the business women and required money for their transactions. The decree is a money decree and the applicant is deprived of fruits of such decree. Since the respondent was directed to deposit Rs. 9,00,000/- (Rs. Nine Lakh only) on condition of grant of stay, the applicant is ready and willing to withdraw such amount on any condition.

5. Learned counsel for the respondent opposed the application on the ground that the appeal could be heard finally at the stage of admission itself and there are sufficient grounds for the respondent to succeed in the second appeal.

6. After hearing learned counsel for the parties, it is clear that matter is pending from the year 2019 for admission. Challenge before this Court in the second appeal is against money decree. Conditional order was passed in

regard to stay of warrant of attachment. Special Darkhast No. 11/2017 was filed by the applicant for recovery of the decretal amount. The Executing Court even issued warrant of attachment. On conditional order passed by this Court such warrant was stayed.

7. Though the second appeal is filed in the year 2019, the same is not admitted yet. Since the matter is not admitted, the applicant could be permitted to withdraw the amount on furnishing bank guarantee of the like amount so that the interest of both the parties could be protected. An amount of Rs. 9,00,000/- (Rs. Nine Lakh only) deposited in this Court in only part of the money decree. In view of the above findings, the applicant could be allowed to withdraw the amount on condition of furnishing bank guarantee to that effect. Hence, the following order.

ORDER

(I) The application stands allowed.

(II) The applicant is permitted to withdraw an amount of Rs. 9,00,000/- (Rs. Nine Lakh only) deposited by the respondent in this Court with interest till date if any on furnishing bank guarantee of the like amount to the effect that in case, the second appeal is allowed and the applicant is directed to deposit/refund such amount , the same shall be refunded as and when called.

(III) The amount could be withdrawn only on furnishing bank guarantee to the satisfaction of the registry.

(IV) The application stands disposed of accordingly.

(BHARAT P DESHPANDE, J.)

PS.B.