

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

916 CIVIL APPLICATION NO.6367 OF 2020
IN FIRST APPEAL STAMP NO. 9506 OF 2020

BANK OF BARODA THR ITS CHIEF MANAGER,
AURANGABAD

VERSUS

M/S OM MARG DARSHAK
THR ITS PARTNER, AURANGABAD

...

Advocate for Applicant : Mr S.V. Adwant
Advocate for Respondent sole : Mr P.F. Patni

CORAM : SHRIKANT D. KULKARNI, J.

DATE : 11th JANUARY, 2022

PER COURT :

1. It is an application for stay moved by the applicant to the operation and execution of the impugned Judgment and decree passed in Rent Civil Suit No. 22/2016 by the 2nd Jt. Civil Judge, Senior Division, Aurangabad.
2. Heard Mr S.V. Adwant, learned counsel for the applicant and Mr Patni, learned counsel for the respondent at length on the prayer of stay.
3. Perused the impugned Judgment and decree passed by the trial Court.

4. The learned counsel for both the sides took me to the relevant part of the Judgment delivered by the trial court.

5. According to Mr Adwant, learned counsel for the applicant, the trial court has decreed time-barred claim and secondly, the trial court has admitted photo copies of the documents which is not permissible in the eye of law. According to Mr Adwant, the trial Court has committed an error in decreeing time-barred claim. It is necessary to grant the stay.

6. Per contra, learned counsel for the respondent Mr Patni submitted that the trial court has considered this aspect in detailed. The respondent has not taken any objection while admitting the documents in evidence. Now, it is an attempt on behalf of the appellant/bank to de-exhibit the document which is not permissible by raising such plea. He submitted that the trial court has considered the claim along with the provisions of law and accordingly partly decreed the suit. He supported the findings recorded by the trial court.

7. At the outset, let me mention that in view of the statement made by Mr Patni, learned counsel for the respondent, the execution of the impugned judgment and decree is stayed.

8. It is revealed during the course of the argument that certain arguable points are involved in the appeal. Even though the learned counsel for the appellant has attempted to argue the matter on merit, that aspect would be dealt with while deciding the appeal. Whether the time-barred claim is decreed by the trial Court and secondly, whether the

evidence which is not admissible in evidence is taken into consideration by the trial Court would be considered while deciding the first appeal on its own merits. That exercise would be done at that time. At the same time, it cannot be overlooked that the legal points involved in the appeal touches to the very root and the claim of the plaintiff. As such, it is necessary to grant the stay to the operation and execution of the Judgment and decree passed by the lower Court. Mr Patni, learned counsel for the respondent submitted that whatever the claim admissible to the appellant/bank, that amount needs to be deposited in the Court.

9. Mr Adwant, learned counsel has rightly pointed out that appellant is a nationalized bank and it will not run away even if there is outstanding amount.

10. The appellant is a nationalized bank and as such, if any amount is found due, the respondent is certainly entitled to recover the same by taking legal recourse. As such, it is not necessary to direct the appellant to deposit the amount.

11. Having regard to the above reasons and discussion, it is necessary to allow this application as under :-

ORDER

- (i) The stay application is hereby allowed in terms of prayer clause (B).
- (ii) Inform to the concerned court accordingly.

- (iii) The appeal is ordered to be registered today itself and Registry is directed to list this appeal after due scrutiny for admission in the third week of February, 2022.
- (iv) The Civil Application is accordingly disposed of.

[SHRIKANT D. KULKARNI, J.]

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