

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

WRIT PETITION NO.1557 OF 2022

**MAHADEO BHANUDAS MULEY
VERSUS
R.L. STEEL AND ENERGY LTD., THROUGH ITS AUTHORISED
PERSON AMIT CHATURVEDI**

...
Advocate for Petitioner : Mr. Shashikant R. Pande
Advocate for Respondent: Mr. Ajeet D. Kasliwal
...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 4th April, 2022

ORDER :

1. The petitioner is aggrieved by the order dated 07/12/2021 passed below Exhibit-5-A in M.A.R.J.I. No.1611/2021 by the 11th Joint Civil Judge, Senior Division, Aurangabad, thereby rejecting the application filed by the petitioner seeking stay to the ex-parte decree. During pendency of this, application for condonation of delay is decided only.

2. An ex-parte decree is passed against the petitioner/judgment debtor for an amount of Rs.14,29,597/-. For recovery of the same, execution proceeding is filed by the respondent/decreed holder for recovery of Rs.15,26,323/-. In the execution proceeding, it is

mentioned that the petitioner has paid an amount of Rs.3,00,000/- towards satisfaction of the decree. Thus, recovery of an amount of Rs.11,29,597/- plus interest at the rate of 18% p.a. of Rs.3,62,600/- is sought from the petitioner.

3. In the execution proceeding, the petitioner appeared and submitted that the petitioner has already moved an application under Order 37 Rule 4 r/w 151 of the Code of Civil Procedure bearing M.A.R.J.I. No.1611/2021 for setting aside the ex-parte judgment and decree passed against him along with delay condonation application. He, therefore, requested for stay of the execution proceedings during the pendency of delay condonation application and setting aside the ex-parte judgment and decree. The said application was resisted by the respondent/decreed holder and the Executing Court has rejected the application. Hence, the present petition.

4. It is not in dispute that the ex-parte decree is passed against the petitioner and the petitioner has filed the said proceedings for setting aside the ex-parte decree alongwith delay condonation application. An amount of Rs.3,00,000/- was paid by the petitioner before the execution proceeding is filed by the respondent/decreed holder. Thereafter, pursuant to the order passed by this Court on

04/03/2022, the petitioner has further deposited an amount of Rs.2,00,000/- in the Trial Court without prejudice to the rights and contentions of the petitioner.

5. In the view of the fact that, ex-parte decree is passed against the petitioner and the petitioner has filed the proceedings of M.A.R.J.I No.1611/2021 along with delay condonation application seeking set aside of the ex-parte decree, the same will have to be decided by the Trial Court on its own merits. In the facts of the present case, this Court is of the opinion that an opportunity needs to be given to the petitioner to contest the said proceedings on merits. Till the said proceeding filed by the petitioner is decided, it is necessary to stay the execution proceeding. The following order therefore would meet the ends of justice.

ORDER

(a) The petitioner shall deposit an amount of Rs.1,00,000/- in the Trial Court within a period of four weeks from today.

(b) The proceeding of Special Darkhast No.15/2019 is stayed for a period of eight weeks from today.

(c) In the meanwhile, the proceeding of M.A.R.J.I. No.1611/2021 along with delay condonation application

shall be decided by the learned Civil Judge, Senior Division, Aurangabad within a period of six weeks from today.

(d) The respondent shall be entitled to press for execution of Special Darkhast No.15/2019, in case the petitioner fails to deposit the amount of Rs.1,00,000/- within the stipulated period.

(e) The amount so deposited by the petitioner in the Trial Court shall be permitted to be withdrawn by the respondent on his furnishing undertaking to the satisfaction of the Trial Court.

(f) Writ Petition is disposed of accordingly.

[NITIN B. SURYAWANSHI, J.]

Sameer