

Pallavi

PALLAVI
MAHENDRA
WARGAONKAR

Digitally signed by
PALLAVI MAHENDRA
WARGAONKAR
Date: 2022.11.25
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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3647 OF 2022

63 Moons Technologies Limited	...Petitioner
Versus	
The Jamshetjee Jeejeebhoy Hospital Nursing Association and Ors.	...Respondents

Mr. Rahul Sarda a/w Ms. Manik Joshi, Mr. Mantul Bajpai, Ms. Priyam Sharma i/b Crawford Bayley & Co.,
for the Petitioner.

Mr. Avinash Joshi for the Respondent No.6.

CORAM: MADHAV J. JAMDAR, J.
DATE: NOVEMBER 18, 2022

P.C.:

1. Heard Mr. Rahul Sarda, learned counsel appearing for the Petitioner and Mr. Avinash Joshi, learned counsel appearing for the Respondent No.6. Mr. Sarda, learned counsel for the Petitioner states that other Respondents are served by private service. However, as none appeared, by order dated 20th June 2022, this Court has permitted the Petitioner to serve the Respondent No.1 by paper publication. Accordingly, the Respondent No.1 has been served by public notice. Respondent Nos.2 to 5 are the Trustees of Respondent No.1. He further submits that the order which is

sought in the present petition will not in any way prejudice Respondent Nos.1 to 5. Learned Advocates appearing for the Petitioner and Respondent No.6 tender minutes of order. The said minutes of order are taken on record and marked 'X' for identification. The said minutes of order are signed by the Advocate for the Petitioner and Advocate for the Respondent No.6 for identification purpose. The said minutes of order reads as under :-

“MINUTES OF THE ORDER

1. Heard the Ld. Counsel for the Petitioner and Respondent No. 6.
2. The Petitioner has filed a Commercial Suit bearing No.228 of 2019 before the City Civil Court, Dindoshi, Mumbai for recovery of a security deposit of Rs. 12,00,000/- made in terms of an agreement dated 19th February 2008 with Respondent No.1 with accrued interest thereon (amounting to Rs.18,00,943/- till the date of filing of the Suit) and for the return of goods and articles lying in the premises/ bungalow of Respondent No.1 being Bungalow No.10 situated at Madh Resort, Marve, Malad (W), Mumbai – 400 064. In the said Suit, the Petitioner had also filed a Notice of Motion bearing No.3327 of 2019 praying that the Respondents deposit the amount of Rs.18,00,943/- with accrued interest thereon in Court.
3. Being aggrieved by the Order dated 10.01.2022 passed by the City Civil Court, Dindoshi, Mumbai dismissing Notice of Motion No. 3327 of 2019, the Petitioner has filed the present Petition.
4. Respondent No.6 was acting as Advocates for Respondent No. 1, Trust and in or about January 2012, Respondent No. 1 deposited the sum of Rs.12,00,000/- in Escrow with Respondent no.6. The Respondent No.6 have invested the

said sum of Rs.12,00,000/- in Fixed Deposit with Central Bank of India, Mumbai Main office, Mumbai 400 023. After enquiring with the Central Bank of India on 18th November 2022 the Respondent No.6 is informed that that upon liquidating the fixed deposit on 18th November 2022, they will receive a a sum of Rs.21,36,839/- (after deduction of tax at source on accrued interest and after adjustment on account of penal interest for pre-mature liquidation of the fixed deposit and bank charges). The Respondent No.6 is ready and willing to deposit the said amount of Rs.21,36,839/- with the Registrar, City Civil Court, Dindoshi, Mumbai .

5. Accordingly, Respondent No. 6 is directed to deposit the amount of Rs.21,36,839/- to be received upon the liquidation of the fixed deposit with the Registrar, City Civil Court, Dindoshi, Mumbai within a period of three weeks from today. The amounts deposited with the Registrar, City Civil Court, Dindoshi, Mumbai shall stand to the credit of Commercial Suit No.228 of 2019 and shall be subject to further orders to be passed in the said Suit. The Registrar, City Civil Court, Dindoshi, Mumbai shall invest the amounts in fixed deposit as per the usual practice of the Court.
6. On depositing an amount of Rs.21,36,839/- with the Registrar, City Civil Court, Dindoshi, Mumbai, the name of Respondent No.6 (Defendant No.7 in Commercial Suit No. 228 of 2019 before the City Civil Court, Dindoshi, Mumbai), shall be deleted by the Petitioner/ Plaintiff from the array of parties.
7. Accordingly, the Petition stands disposed of.
8. All other contentions of the Petitioner in the Commercial Suit are kept open.
9. No order as to costs.”

2. The Petitioner has filed Commercial Suit bearing No.228 of 2019 before the City Civil Court, Dindoshi for recovery of security deposit of Rs.12,00,000/- (Rupees Twelve Lakhs only) made in terms of agreement dated 28th February 2008 with Respondent

No.1. The said amounts were deposited with Respondent No.6 – Mulla & Mulla & Craigie Blunt & Caroe who were at that particular time were acting as Advocates and Solicitors of Respondent No.1.

3. By Notice of Motion No.3327 of 2019, the Petitioner i.e. Plaintiff sought direction directing the defendants to jointly and severally deposit the said amount in Court and the said motion was dismissed by the impugned order.

4. By the minutes of order, the Petitioner and Respondent No.6 have arrived at some arrangement. By said arrangement, Respondent No.6 is to deposit an amount of Rs.21,36,839/- which is inclusive of principal amount of Rs.12 Lakhs and accrued interest thereon with the City Civil Court, Dindoshi, Mumbai. The said amount shall remain with the Registrar, City Civil Court, Mumbai and the same shall be invested in Fixed Deposit from time to time as per the usual practice of the Court. Hence, the order in terms of minutes of order is passed.

5. On depositing the said amount of Rs.21,36,839/- name of Respondent No.6 shall be deleted from the array of the parties in Commercial Suit No.228 of 2019.

6. The amount deposited shall stand credited to the said Commercial Suit and will be subject to further orders to be passed in the said suit.

7. Writ Petition is disposed of in above terms with no order as to costs.

(MADHAV J. JAMDAR, J.)