

Ashwini

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
IN ITS COMMERCIAL APPELLATE DIVISION
INTERIM APPLICATION NO. 3233 OF 2022
IN
COMMERCIAL FIRST APPEAL NO. 5 OF 2022
IN
SUMMARY JUDGMENT NO. 4 OF 2021
IN
COMMERCIAL SUIT NO. 1031 OF 2020**

Khan and Co Infra Projects Pvt Ltd	...Applicant
<i>In the matter between</i>	
Khan and Co Infra Projects Pvt Ltd	...Appellant
<i>Versus</i>	
Meet S/o Prakash Udani (Sole Proprietor Trishul Enterprises)	...Respondent

Mr Chandrakant Ambani, for the Applicant.
Mr Girish Kedia, for the Respondent.

**CORAM G.S. Patel &
 M.G. Sewlikar, JJ.**
DATED: 14th June 2022

PC:-

ASHWINI
HULGOJI
GAJAKOSH

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COMMERCIAL FIRST APPEAL NO. 5 OF 2022

1. Admit.
2. As regards the Record and Proceedings of the lower court in each admitted First Appeal, while these are formally called for, we request the Registry to ask the lower court's registry to transmit electronically a soft copy in in PDF format.
3. The entire record should be serially paginated so that the PDF page numbers correspond to the physical page numbers (which means that every page, including index pages and cover sheets will bear running page numbers).
4. Mr YA Goswami, CPC of this Court, is requested to coordinate. A copy of this order is to be sent to him. The Roznama of the lower Court needs to be separately digitized and compiled. All previous orders of this Court in the First Appeals are also to be separately digitized and compiled.
5. All Advocates are entitled to a soft copy of the R & P, if they so wish.
6. As regards hard or soft copies for the Bench, the necessary instructions will be issued at a later date.

INTERIM APPLICATION NO. 3233 OF 2022

7. This is the Appellants' Interim Application for stay of the impugned judgment and decree.

8. The Appellants suffered a money decree dated 29th September 2021. Summary judgment was entered for the Plaintiff in the amount of Rs. 37,15,254/- and interest at 11% per annum. There was apparently no dispute as to the dishonour of some cheques. After the decree, the Respondents moved in execution and attach the Plaintiff's bank account some time in February 2022. That bank account has sufficient balance to satisfy the decree. The Appeal was filed on 29th March 2022.

9. For the purposes of stay of execution, in view of the provisions of Order 41 Rule 5 of the Civil Procedure Code 1908, the judgment debtor must be put to terms and must furnish security. Especially in a money decree, there can be no two views on this. The submission that a lower amount should be required to be deposit does not impress us. No cogent reason is given for this.

10. Hence, the following order:

- (a) By 5th July 2022, the Appellant will deposit in this Court with the Nazir's branch the entire amount decreed and interest computed up to that date.

- (b)** Upon that deposit being made the amount will be invested in accordance with the usual practices of the Registry.
- (c)** For the purposes of making the deposit, the Punjab National Bank, Goregaon Branch will permit a remittance by the Appellant from that account directly to the Nazir's Branch on the Appellate Side irrespective of the attachment. The Manager of the Punjab National Bank is directed to act on an authenticated copy of this order. He has to ensure that only the remittance to the High Court is effected by the Appellants. This order is not to be construed as a lifting of the attachment on the bank account except for this limited purpose.
- (d)** If the amount is not deposited in this Court by that date, the attachment and execution may proceed and the bank account will remain under attachment.
- (e)** In the event that the Appellant deposits only a part of the decretal amount, attachment and execution may proceed for the balance.
- (f)** The Respondent will be entitled to file an Interim Application for withdrawal. This will be decided on its own merits.

11. The Interim Application is disposed of in these terms.

12. No costs.

(M.G. Sewlikar, J)

(G. S. Patel, J)