

Varsha

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 10525 OF 2022
WITH
INTERIM APPLICATION NO. 10526 OF 2022
IN
COMMERCIAL FIRST APPEAL (L) NO. 15194 OF 2022
IN
SPECIAL CIVIL SUIT NO. 54 OF 2017**

Western Agri Food Park Pvt Ltd & Ors ...Applicants
Versus
Rachana Developers & Ors ...Respondents

**WITH
INTERIM APPLICATION NO. 10030 OF 2022
IN
COMMERCIAL FIRST APPEAL (L) NO. 13118 OF 2022
IN
SPECIAL CIVIL SUIT NO. 54 OF 2017**

Rachana Developers & Ors ...Applicants
Versus
Western Agri Food Park Pvt Ltd & Ors ...Respondents

Mr Vishwajit Sawant, *with Manisha Mane Bhongale, with Bijal Vora,
i/b Parinam Law Associates, for the Applicant in IA 10525/2022
& IA/10526/2022 & for Respondent in IA 10030/2022.*

**Mr GS Godbole, i/b Shon D Gagil & Kaustubh Thipsay, for the
Appellant in both IA 10526/2022 & IA 10030/2022.**

**CORAM G.S. Patel &
 Gauri Godse, JJ.**

DATED: 16th September 2022

PC:-

INTERIM APPLICATION NO. 10525 OF 2022

1. The Interim Application seeks that the delay of 17 days be condoned. For the reasons set out in the Interim Application the delay is condoned.

2. Interim Application is disposed of.

INTERIM APPLICATION NO. 10526 OF 2022

3. The Interim Application seeks a stay on the execution of the Judgment and Decree dated 10th March 2022. The First Appeal was in a money suit. The Plaintiffs were Rachana Developers and others. They have filed their own First Appeal (L) No. 13118 of 2022. The defendants were Western Agri Food Park Pvt Ltd and others.

4. The decree in the Rachana Developers suit was in the amount of Rs. 10 Crores with interest at the rate of 12% per annum from 23rd May 2013 until realization. The decree also dismissed Rachana Developers' claim for a charge over certain lands shown in the

schedule annexed to the plaint as security for the repayment of the decretal amount.

5. It seems that in interlocutory proceedings the original defendants, Western Agri Food Park, were required to give an unconditional bank guarantee in the amount of Rs. 15 Crores. This has been furnished to the satisfaction of the Trial Court.

6. With interest computed up to 30th September, the decretal amount is slightly more than Rs. 21 Crores.

7. Mr Sawant has instructions obtained in the Court to say that the judgment debtor/original defendant will deposit such amount over and above the Rs. 15 crores secured by the bank guarantee as is sufficient to meet the entire decretal claim with interest up to the date of deposit. That deposit is to be made within four weeks from today.

8. He makes a further statement on instructions that until that deposit is made, the land in question referred to in paragraph 3 of the impugned order at internal page 67 will not be transacted and no third party rights or alienation will be created in respect thereof nor will possession be parted with. The statement is noted and accepted.

9. He makes a further statement that within period of four weeks thereafter, the Judgment debtor will deposit an amount of Rs. 15 Crores with the executing court and against such a deposit the judgment debtor may be allowed to withdraw the bank guarantee. As

far as the second aspect is concerned, we leave it to the judgment debtor to decide whether to continue the bank guarantee or to substitute it with a cash deposit in the amount of the bank guarantee. We are not ordering this, but we are making it clear that the security that is to be provided, one way or the other, is of the full decretal amount with interest as awarded.

10. That said, we cannot leave this option to the judgment debtor open ended. The judgment debtor will have an additional four weeks after the first deposit is made to deposit the amount of Rs. 15 crores and against this to withdraw the bank guarantee. If not done in that time, the bank guarantee will continue and will have to be renewed periodically as required.

11. Execution of the decree is presently stayed for a period of four weeks. If the defendant-judgment debtor fails to make the deposit of the additional amount within period of four weeks, execution may proceed.

12. Liberty to the judgment creditor, Rachana Developers, to file a further Interim Application seeking a withdrawal of the full or part of the amount deposited or secured.

13. Interim Application No. 10526 of 2022 by Western Agri Food Products is disposed of in these terms.

**INTERIM APPLICATION NO. 10030 OF 2022 IN
COMMERCIAL FIRST APPEAL (L) NO. 13118 OF 2022**

14. Rachana Developers has filed Interim Application No. 10030 of 2022 for an order restraining the judgment debtor from withdrawing the bank guarantee. It also seeks an injunction in respect of the land in question. In view of the order that we have made today, that Interim Application by Rachana Developers is infructuous and is disposed of accordingly.

**COMMERCIAL FIRST APPEAL (L) NO. 15194 OF 2022 AND
COMMERCIAL FIRST APPEAL (L) NO. 13118 OF 2022**

15. Both First Appeals, *admit*.

16. 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.

17. 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).

18. 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.

19. All Advocates are entitled to a soft copy of the R & P, if they so wish.

20. As regards hard or soft copies for the Bench, the necessary instructions will be issued at a later date.

(Gauri Godse, J)

(G. S. Patel, J)