

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

**CIVIL APPLICATION NO. 3135 OF 2021
IN
COMMERCIAL APPEAL NO. 09 OF 2019**

Gurunanak Industries Now GNI
Infrastructure Pvt. Ltd. through
Authorized Signatory
Khushbirsingh B. Bindra .. Applicant

Versus

Executive Director GMIDC
Sinchan Bhavan Aurangabad
and others .. Respondents

Shri Anand P. Bhandari, Advocate for the Applicant.
Shri Sudhir G. Bhalerao, Advocate for the Respondent Nos. 1 to
4.

**CORAM : NITIN W. SAMBRE AND
S. G. CHAPALGAONKAR, JJ.
DATE : 29TH MARCH, 2023.**

FINAL ORDER :

. This is an application by the decree holder with a prayer for vacation of interim order dated November 11, 2019 or in alternate to direct the appellant-judgment debtor, statutory corporation to deposit entire decretal amount pursuant to judgment and decree dated August 09, 2019 delivered in Commercial Suit No. 08 of 2019.

2. The decree holder in the aforesaid commercial appeal had appeared on caveat and on 11th November, 2019 this Court while

admitting appeal put the appellant to the condition of deposit of 1/4th of the decretal amount.

3. Subsequent thereto the appellant/present non applicants moved an application bearing Civil Application No. 3138 of 2021, wherein a prayer was made, which reads as under :

"A) Applicant prays that in view order dated 11/11/2019 passed in Commercial Appeal No. 9/2019, extension of time to deposit amount may kindly be granted for depositing 25% of amount i. e. Rs. 1,44,06,278/- and further impugned judgment & order dated 9/8/2019 passed in Commercial Suit No. 8/2019 be stayed till disposal of pending Commercial Appeal 9/2019."

4. After hearing decree holder said application came to be allowed in terms of prayer Clause A vide order dated March 09, 2021.

5. In the aforesaid background the contention of Mr. Bhandari, learned counsel for the applicant/original respondent is that the decree passed in the matter in question is a money decree, as such the proceedings are governed by the provisions of Order XLI of the Code of Civil Procedure (for short "Code"). According to him under Sub Rule (3) of Rule 1 of Order XLI of the Code, while entertaining an appeal the Court is empowered to put the appellant to condition of deposit of amount. Accordingly on November 11, 2019 an order of deposit of 1/4th of decretal was passed. He would further urge that even if decree

holder has appeared on caveat, he has moved present application with the relief as referred above particularly having regard to the order of directing deposit made by this Court to the appellant. He would urge that since entire amount under the money decree is not deposited, a prayer for vacation of interim relief or direction to deposit entire amount is made.

6. Appellant/judgment debtor moved an application bearing Civil Application No. 3138 of 2021, wherein not only extension to deposit 25% amount was sought (as was directed to be deposited by the appellant vide order dated November 11, 2019), but the appellant has also sought stay to the money decree. According to him in such eventuality provisions of Order XLI Rule 5 of the Code would come in operation, which provides deposit of entire amount, but for in exceptional circumstances for reasons to be recorded for non deposit of entire amount the Court can grant relief of stay. He would urge that this Court has not recorded any reasons while granting stay to the execution of a money decree, in support he has placed reliance on the judgment of the Apex Court in the matter of **M/s Alwa Strips Pvt. Ltd. Vs. M/s Jyoti Ltd. delivered in Civil Appeal No. 7410-7411 of 2008 decided on 18th December, 2008**. He would urge that it is a mandated under the aforesaid statutory provision that the judgment debtor in case he questions a money decree, he must deposit entire decretal amount in the Court. It is claimed by the appellant that the order dated 09th March, 2021 thereby staying execution of decree was without prejudice to the rights of the applicant in the present application.

7. While countering aforesaid submissions, learned counsel for original appellants/judgment debtors would urge that not only on 11th November, 2019 when the order was passed by this Court admitting the appeal the decree holder was heard, but also at the time of grant of stay the applicant/decreed holder was duly heard. According to him arguments which were canvassed while making out case in the present application were duly made and after consideration of such argument order of grant of stay came to be passed. He would further urge that it being commercial appeal and huge amount is involved, appeal can be expeditiously heard and decided.

8. We have appreciated said submissions.

9. The fact remains that this Court on November 11, 2019 while admitting the appeal heard learned counsel for the decree holder and has directed the judgment debtor to deposit an amount to the extent of 1/4th of the amount under the decree. Pursuant thereto decree holder had moved present application seeking for vacation of interim relief or for issuance of direction to deposit of entire amount under the decree. The application was very much pending when the prayer of the judgment debtor for grant of stay to the execution of decree was taken out bearing Civil Application No. 3138 of 2021, which was allowed on March 09, 2021. Perhaps while deciding said application this Court was sensitive of the detailed order and the findings recorded on November 11, 2019 while admitting the appeal. As such this

Court allowed said application for stay in terms of prayer clause A therein. As a sequel of this, execution of money decree came to be stayed.

10. Fact remains present application was very much pending at the relevant time i. e. on March 09, 2021, when the order of stay was granted. Not only pendency of aforesaid application, but counsel for the decree holder also argued the matter, the issues which are sought to be canvassed at this stage were very much available at the said stage. As such after considering rival arguments canvased by respective counsels and hearing the parties order of granting stay came to be passed in the matter.

11. This Court had directed the judgment debtor vide order dated 11th November, 2019 to deposit 1/4th of decreetal amount, which is already withdrawn by the decree holder. Such order of deposit was made pursuant to the provisions of Order XLI Rule 1(3) of the Code. Though it is claimed by Mr. Bhandari, learned counsel for the decree holder that while granting relief under Order XLI Rule 5 of the Code, it was necessary to direct the judgment debtor to deposit the entire decreetal amount, however it is required to be observed that the amount deposited while admitting the appeal pursuant to the provisions of Order XLI Rule 1(3) of the Code can also be taken into account and relied while deciding the prayer for grant of stay to a money decree under Order XLI Rule 5 of the Code.

12. The contention that the decision on the Civil Application

No. 3138 of 2021 on 09th March, 2021 cannot be said to be without prejudice to the rights of the applicant, in this application is also liable to be rejected as it was well within the knowledge of the decree holder that present application was pending before the Court on the said date and it was always open for the applicant/decreed holder to bring said fact to the notice of the Court and invite findings.

13. This Court not only by directing deposit of 1/4th amount of money under the decree, but by permitting withdrawal of said amount has balanced the equity in favour of the parties for the purpose of deciding interlocutory rights. In the wake of above, we deem it appropriate to reject the present civil application. However, we expedite hearing of the present commercial appeal.

14. In this background, we deem it appropriate to reject the present application. The appellant/judgment debtor is a State Government statutory corporation and the amount of the applicant/original respondent can be said to be secured, which of course he will be entitled to receive if the appeal is dismissed with interest.

[S. G. CHAPALGAONKAR, J.]

[NITIN W. SAMBRE , J.]

bsb/March 23