

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

7 CIVIL APPLICATION NO.5451 OF 2018
IN
COM. APPEAL NO.3 OF 2019

M/S LILASONS INDUSTRIES LTD, AURANGABAD
VERSUS
M/S IDMC LIMITED, GUJRAT

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Advocate for Applicant :Mr. A B Gaikwad (Patil)
Advocate for Respondent : Mr. N B Khandare h/f Mr. S. S.
Gangakhedkar

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CORAM : NITIN W. SAMBRE & S. G. CHAPALGAONKAR, JJ.
Dated: March 13, 2023

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PER COURT :-

1. The Non-applicant/Judgment debtor suffered a decree for recovery of an amount being judgment and decree dated 21.2.2017 delivered by the 4th Jt. Civil Judge Sr. Division, Aurangabad. The Judgment Debtor/original defendant accordingly preferred the Commercial Appeal, which is admitted and subject to the deposit of amount, interim protection is granted.

2. Present application is taken on by the Decree Holder seeking withdrawal of the amount deposited by the Judgment Debtor and according to him the Court below have adjudicated

respective rights of the parties and has awarded the monetary claim.

3. While objecting such withdrawal, learned counsel for the non-applicant/Judgment Debtor Mr. Khandare would invite attention of this Court to the provisions of Section 3 and Section 15 of the Commercial Courts Act, 2015 (for the sake of convenience hereinafter referred to as 'the Act of 2015') so as to substantiate his claim that decree in which the amount is deposited is without jurisdiction he would urge that the suit came to be initiated on September 12, 2011 and the Act to be promulgated on October 23, 2015, of which effect is given in the State of Maharashtra on January 1, 2016. He would urge that pursuant to the provisions of Section 15 of the Act of 2015, all the suits are covered under Section 3 of the Act of 2015 stood transferred to the Commercial Court and as such, it was the duty of the Court of Civil Judge Senior Division to transfer the suit in question to the Commercial Court which it has failed to. According to him, since the Court of Civil Judge Senior Division lacks inherent jurisdiction, in the aforesaid background, the decree becomes without jurisdiction and is null and void.

aaa/-

4. We have appreciated the aforesaid submissions. The fact remains that the claim in the suit is covered under the provisions of sub-section 3 of Act of 2015. In such an eventuality, provisions of section 15 of Act of 2015 is attracted.

5. Admittedly, there is failure on the part of the Court of Civil Judge S.D. in transferring the suit to the Commercial Court. However, sub-section (5) of Section 15 of Act of 2015 caste a duty on the parties to the suit to move an application in such an eventuality i.e. failure of the Court to transfer the suit seeking transfer of said suit.

6. In the case in hand, both the parties i.e. Judgment Debtor so also the Decree Holder has failed to take recourse to the provisions of sub-section (5) of Section 15 of the Act. As a consequence of above, Civil Court continued with the suit proceedings and passed a decree.

7. It is at appellate stage, the Judgment Debtor has raised an issue of lack of inherent jurisdiction.

8. This Court needs to be sensitive to the fact that such ground is raised by the Judgment Debtor for having suffered a decree after having participated in the suit proceeding.

9. In this background, we are of the view that *maxim actus curiae neminem gravabit* will be made applicable and a such the applicant/decreed holder cannot be denied fruits of the decree as Act of the Court shall prejudice none.

10. As such, the application is allowed. The applicant is permitted to withdraw 50% of the amount deposited subject to furnishing an undertaking that, in case if the decree is set aside, the applicant shall re-deposit the said amount in the Court alongwith interest as would be ordered at the relevant time.

11. Learned counsel appearing for the J.D. submits that legal issue of lack of inherent jurisdiction is involved in this proceedings. Hence, effect and implementation of the present order be stayed for a period of three weeks as he intends to test the legality of this order before the Apex Court. In view of the aforesaid submissions, we deem it appropriate to grant stay to our aforesaid order for a period of three weeks from today.

aaa/-

12. The Application is disposed off.

(S. G. CHAPALGAONKAR, J.)

(NITIN W. SAMBRE, J.)

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