

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

**COMMERCIAL APPEAL NO.3 OF 2021
WITH
CIVIL APPLICATION NO.11413 OF 2022
IN COMAP/3/2021**

**THE STATE OF MAHARASHTRA AND OTHERS
VERSUS
M/S JAYKUMAR FULCHAND AJMERA**

**WITH
WRIT PETITION NO.7425 OF 2022**

**M/s JAYKUMAR FULCHAND AJMERA
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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AGP for the Appellants in Appeal and for the Respondents in
WP : Shri S.G. Karlekar
Advocate for the Respondent in Appeal and for the Petitioner in
WP : Shri G.K. Naik Thigle

...

**CORAM : RAVINDRA V. GHUGE
&
Y. G. KHOBRAGADE, JJ.**

DATE :- 19th August, 2023

Per Court :-

(a) Civil Application No.11413/2022:-

1. The State of Maharashtra has preferred this Civil
Application and has put forth prayer clause B as under:-

*"B) Pending hearing and final disposal of
Commercial Appeal No.03/2021 the effect,
implementation and execution of judgment and*

decree dated 27.02.2020 in Commercial Suit No.1/2017 passed by the Commercial Court, District Judge-2, Osmanabad may kindly be stayed."

2. We have considered the strenuous submissions of the learned AGP on behalf of the Applicant/original Appellant and the learned Advocate for the Decree Holder, who has relied upon the extensive affidavit in reply filed on 16.08.2022.

3. After the hearing was concluded, the learned Advocate for the Decree Holder submits, on instructions from the representative of the Decree Holder present in the Court, that as the State has deposited more than 50% of the decreetal amount in the backdrop of the order dated 21.08.2021 passed in Civil Application No.2159/2021 and the order dated 22.10.2021 passed in Commercial Appeal No.3/2021, the Civil Application may be granted in terms of the prayer clause B.

4. In view of the above, this Civil Application is allowed in terms of prayer clause B, by consent.

(b) **Writ Petition No.7425/2022:-**

5. This petition has been clubbed with Commercial Appeal No.3/2021 vide the order passed by the Administrative

Judge of this Court on 22.09.2022.

6. By this petition, the Decree Holder seeks to challenge the order passed by the learned District Judge-3, Osmanabad, below Exhibit-18 in Special Darkhast No.223/2020, by which, the Executing Court has declined the permission to the Decree Holder to withdraw the amount of Rs.2,27,82,616/- deposited by the State vide the Demand Draft dated 06.05.2022.

7. Today, we have passed the order in Civil Application No.11413/2022, by consent, by which the interim stay granted by this Court vide the order dated 21.08.2021, has been restored.

8. The learned Advocate for the Decree Holder submits, on instructions from the representative of the Decree Holder present in the Court, that if this Court is inclined to allow the Decree Holder to withdraw some portion of the amount, the bank guarantee as well as an affidavit-undertaking for such amount would be tendered by the Petitioner/ Decree Holder.

9. After hearing the parties, we expressed a view that we are inclined to allow the Decree Holder to withdraw the amount of Rs.75 lacs pending the hearing in the Commercial Appeal.

10. The learned Advocate for the Decree Holder submits

that instead of giving a bank guarantee for the entire amount, the Decree Holder may execute a bank guarantee for an amount of Rs.35 lacs and an affidavit-undertaking for an amount of Rs.40 lacs.

11. The learned AGP has vehemently opposed the withdrawal of any amount by the Decree Holder.

12. We find that the Decree Holder has succeeded to the extent of Rs.1,19,21,744/-. The Commercial Court has granted 12% interest on the said amount, which, prima facie, appears to be exorbitant. Nevertheless, the State has deposited Rs.2,27,82,616/- before the Executing Court.

13. By this Writ Petition, the Petitioner/ Decree Holder seeks to challenge the order of the Executing Court refusing leave to withdraw the amount. If the Petitioner succeeds in the Writ Petition, we can mould the reliefs suitably.

14. In view of the above, **this Writ Petition is partly allowed** and the impugned order dated 22.06.2022 is modified as under:-

(a) In view of the statement of the Petitioner/ Decree Holder, we grant leave to withdraw Rs.40 lacs from the

Executing Court by tendering an affidavit-undertaking, copy of which will also be placed on record in Commercial Appeal No.3/2021 pending in this Court, stating therein that if the Petitioner/ Decree Holder ultimately is held to have been paid excess amounts or has withdrawn excess amounts, such excess amounts shall be redeposited in this Court within six weeks from the date of the decision in the Commercial Appeal, failing which, the said amounts would be recovered from the outstanding bills of the Petitioner in other contracts/projects, if pending with the State Government.

(b) The Petitioner would withdraw an amount of Rs.35 lacs by executing a bank guarantee, which would last until the decision in the Commercial Appeal before us and shall not be released until specific orders from this Court.

(c) **Commercial Appeal No.3/2021:-**

15. Since the record and proceeding has been received, list this appeal for final hearing on 27.09.2023.