

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

WRIT PETITION NO. 12992 OF 2023

Danish Khan Yunus Khan

.. Petitioner

Versus

Aamin Khan Kabir Khan

.. Respondent

Shri Siddhartha A. Yawalkar, Advocate for the Petitioner.

CORAM : SHAILESH P. BRAHME, J.

DATE : 27TH OCTOBER 2023.

FINAL ORDER :

. Heard the learned counsel for the petitioner. The petitioner is challenging order dated 28.08.2023 passed by the lower Appellate Court allowing the application Exhibit 16 thereby permitting the respondents to deposit an amount of Rs. 10,875/-.

2. The petitioner is original plaintiff, who has filed suit for specific performance of contract. The suit was decreed. Being aggrieved R.C.A. No. 115 of 2022 is filed by the respondent along with application Exhibit 05 for stay to the execution of the decree of the Trial Court. By order dated 03.01.2023 interim stay was granted on condition of deposit of an amount of Rs. 10,875/- within a period of one month. The respondent failed to comply this part of the order. Thereafter the respondent filed applications Exhibit 15 and 16 seeking permission to deposit the

amount as stipulated in the impugned order. It was opposed by the petitioner. By the impugned order the respondent is permitted to pay the cost.

3. The learned counsel for the petitioner submits that there was default clause incorporated in the order dated 03.01.2023. The respondent should have been more diligent. The learned Judge of the lower Appellate Court has committed perversity in allowing the applications.

4. The lower Appellate Court has allowed the applications by adopting pragmatic view. The substantive appeal is pending. If the decree is permitted to be executed, just for not depositing an amount of Rs. 10,875/-, grave prejudice is likely to be caused to the respondent. There is no illegality or perversity in the impugned order. No interference is called for in the impugned order. The writ petition is dismissed. The lower appellate Court is requested to expedite the hearing of the R.C.A. No. 115 of 2022.

[SHAILESH P. BRAHME, J.]

bsb/Oct. 23