

SA Pathan

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.10109 OF 2023

Anand Dashrath Gaikwad

... Petitioner

V/s.

Vispi Dotiwala Dara

... Respondent

SHABNOOR
AYUB
PATHAN
Digitally signed by
SHABNOOR AYUB
PATHAN
Date: 2023.08.21
17:43:07 +0530

Mr. Atul Damale, Sr. Advocate i/by Mr. Vimlesh Singh,
for the Petitioner.

Mr. Shailesh Pathak a/w Jay Vora, Respondent.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 21, 2023

P.C.:

1. The writ petition arises out order dated 22 June 2023. By the impugned order Notice of Motion under Order IX Rule 13 of the Code of Civil Procedure, 1908 has been made absolute, the ex-parte decree is set aside. However, while setting aside ex-parte decree, the Trial Court has directed the defendant to deposit Rs.10 lakh within two months.

2. On perusal of the impugned order, it appears that no discussion or reasons have been assigned to grant such relief under clause 2(a) of the impugned order. In the absence for discussion and reasons, the Superior Court not in the position to exercise judicial review against the said impugned order. It would appropriate in the interest of justice that the Trial Court shall

assign reasons in support of clause 2(a) of the order. Hence, following order:

- a.** The impugned order to the extent of clause 2(a) of the order dated 22 June 2023 is quashed and set aside.
 - b.** The Trial Court shall re-consider on the aspect of direction to deposit an amount of Rs.10 lakh, after giving opportunity to the hearing to the defendant and plaintiff.
 - c.** The Trial Court shall decide the said issue uninfluenced and any of the observations made in the present order.
- 3.** Rule is made absolute to that extent.

(AMIT BORKAR, J.)