



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

945 CIVIL APPLICATION NO. 311 OF 2024
IN SA/191/2023

Abhijit Fire And Safety Services,Applicant

VERSUS

Sri Kasi Annapurna Vasavi Arya Vyasa,
Vrudhasharamam And Nityanna Satram,Respondent

.....

Mr. A. D. Ostwal, Advocate for Applicant
Ms. P. P. Wangikar, Advocate holding for Mr. Faruk Shaikh, Advocate for
appellant in Second Appeal.

CORAM : R. M. JOSHI, J.

DATE : 30th JANUARY, 2024.

PER COURT :

1. This application is for withdrawal of amount of Rs. 4,44,332/- along with interest at the rate of 6% per annum from the date of decree pursuant to the order passed by this Court on 13th April, 2023.

2. Heard both sides. Learned counsel for applicant submits that the appellant/defendant has failed to appear before the Trial Court and the findings recorded by the First Appellate Court prima facie show that inspite of service of summons, defendant chose not to appear before the Trial Court. It is further submitted that this Court

has directed the appellant to deposit the principle amount along with interest at the rate of 6% per annum from the date of decree whereas the Trial Court as well as the First Appellate Court have directed said payment from the date prior to the decree. It is his submission that having regard to these facts, there should not be any impediment in permitting the appellant to withdraw entire amount deposited.

3. Learned counsel for appellant/respondent opposed the said contention by drawing attention of the Court to the plea taken by appellant before the First Appellate Court about non-service of summon so also interest granted by the First Appellate Court by enhancing from 6% per annum to 10% per annum.

4. Regular Civil Suit No. 512/2017 was filed for recovery of sum of Rs. 4,44,332/-. Prima facie, it seems from the record that appellant/original defendant was duly served with notice but failed to appear before the Trial Court. This aspect has been considered by the First Appellate Court. Prima facie, this Court is of the view that the issue before this Court at the most could be with regard to rate of interest enhanced by the First Appellate Court. Having regard to the fact that the appellant was directed to deposit the principle amount

along with interest at the rate of 6% per annum from the date of decree and not as per the order passed by the learned Trial Court, this Court finds no impediment in permitting the appellant to withdraw the amount deposited in this Court along with interest accrued thereon subject to furnishing usual undertaking.

5. In view of above, application stands disposed of.

(R. M. JOSHI)
Judge

dyb