



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

**CIVIL APPLICATION NO. 871 OF 2022
IN SA/263/2021**

**M/S SHIVA ENTERPRISES, THROUGH ITS PARTNER MR.
BHOOPNARAYAN S/O RAJKARAN SINGH AURANGABAD**

VERSUS

**THE MAHARAHSTRA HOUSING AND AREA DEVELOPMENT
AUTHORITY (MHADA), THROUGH ITS SECRETARY
MANTRALAYA**

....

Mr. J. N. Singh, Advocate for applicant

Mrs Renuka V. Ghule, Advocate for respondent

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CORAM : Y. G. KHOBRAGADE, J.

DATE : 15 MARCH 2024

PER COURT :-

1. The learned Counsel appearing for the applicant submits that the applicant has filed the present application for withdrawal of amount which was deposited by respondent No.1 in pursuant of the judgment and decree dated 18.01.2020. According to him, on 01.03.2008, the learned trial Court passed the judgment and decree thereby directed the defendants/present appellants to pay an amount of Rs.65,70,282/- with interest @ 12% p.a. from the date of the order till its realization. Being

aggrieved by the said judgment and decree, the present appellant /original defendants filed R.C.A. No.213 of 2018. On 18.01.2020, the learned First Appellate Court modified the judgment and decree passed by the trial Court and directed the defendants/appellants to pay to the tune of Rs.37,51,784/- to the plaintiff/respondent with interest at the rate 12% p.a. from the date of filing of the suit till the date of decree and 6% p.a. from the date of decree till the date of actual payment.

2. The learned Counsel for the applicant/original plaintiff submits that the amount of Rs.32,85,141/- has been withdrawn by the plaintiff. He submits that the said amount was not from out of the modified decree by the learned first appellate Court, but it was out of the judgment and decree passed by the learned trial Court.

3. The learned Counsel appearing for the appellants/original defendants submits that besides withdrawal of the amount of Rs.32,85,141/-, by the respondent plaintiff, the amount to the tune of Rs. 2,31,435/- also deposited by the appellants before this Court on 09.05.2014 and this amount also withdrawn by the respondent/plaintiff and accrued interest to the tune of Rs.32,851/-. Therefore, the respondent-defendant received the total amount of

Rs.55,50,838/- against 13 running bills. However, the work was done at the risk of the contractor through another contractor to the tune of Rs.6,25,866/-.

4. By the present application, the respondent/original plaintiff prayed for withdrawal of remaining decretal amount of Rs.36,63,079/- with accrued interest. As such, the execution proceeding is pending before the executing Court. Therefore, this Court in Second Appeal cannot arithmetically calculate the amount and the respondent/plaintiff is required to calculate the principle amount plus interest under the decree before the executing Court.

5. In view of the above, the present application is disposed of.

6. The respondent/plaintiff is granted liberty to approach the executing Court for furnishing arithmetical calculations.

7. After the calculations are furnished by the respective parties, the executing Court to satisfy and remit said calculations to this Court.

[Y. G. KHOBRAGADE, J.]