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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL (ST) NO. 20901 OF 2022
WITH
INTERIM APPLICATION NO. 18188 OF 2022
IN
SECOND APPEAL (ST) NO. 20901 OF 2022**

Ashok Laxhman Howal ... Appellant/Applicant
vs.

Shri Collection thr. Proprietor Kishore ... Respondents
Ramchandra Padalkar and Anr

Mr. Pradeep Thorat a/w. Ms. Aditi Naikare for Appellant/Applicant.
Mr. Ashok Tajane and Mr. Sanket Dhawan i/b. Ms. Kavita Tajane for
Respondent No.1.

CORAM : GAURI GODSE, J.

DATED : 2nd DECEMBER 2024

ORDER:

1. Heard learned counsel for the appellant. The second appeal is admitted on the following substantial questions of law formulated in ground nos. (A) to (D) in the second appeal memo:

A) Whether the alleged admissions given by defendant no.2 in his cross examination regarding receipt of the goods from the

plaintiff can be used to impose liability on defendant no.1, when admittedly the delivery challans do not bear the signature of defendant no.1?

B) Whether the mere fact that the plaintiff has withdrawn an amount of Rs. 45,000/- from his bank account can be sufficient proof that the said amount is paid to defendant no.1, especially in absence of any acknowledgement of the receipt of the said amount by the defendant no.1?

C) Whether the books of accounts maintained by the plaintiff in his course of business can be sufficient to charge defendant no.1 with monetary liability especially in the absence of any acknowledgement of liability by defendant no.1 in view of the provisions of Section 34 of the Indian Evidence Act?

D) Whether in the absence of signature of defendant no.1 on the delivery challans produced at Exhibit-149 to 172 the liability to pay the value of the goods under the said Challans can be fastened upon defendant no.1 when the suit has been dismissed against defendant no.2 and the same has not been challenged by the plaintiff?

2. Learned advocate for respondent no.1 waives notice.

3. In addition to Court notice, learned advocate for the appellants to serve the remaining respondents, by private notice and file affidavit of service.
4. Call for records and proceedings.
5. Printing is dispensed with.
6. Learned advocate for the appellants shall file private paper-book within a period of one year from today.

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7. This application is for stay to the execution and operation of the impugned decree. The impugned decree is in favour of respondent no.1, who is the original plaintiff. Hence, notice of the application is not necessary to respondent no.2.
8. Learned counsel for the appellant submits that the appellant has already deposited an amount of Rs. 1,00,000/- in the trial court. He submits that the appellant would deposit the balance decretal amount in the trial court within four weeks. Subject to the appellant depositing the entire balance decretal amount in the trial court within four weeks, there will be interim stay in terms of prayer clause (b), during the pendency of the second appeal.
9. The trial court is directed to invest the amount already

deposited by the appellant alongwith the amount that would be deposited by the appellant in any Nationalised Bank and the same shall remain invested during the pendency of the second appeal or any further order passed by this court.

10. Interim application is disposed of in the above terms.

11. Respondent no.1 is at liberty to apply for withdrawal of the said amount.

(GAURI GODSE, J.)