

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

INTERIM APPLICATION NO. 2218 OF 2024
IN
COMMERCIAL EXECUTION APPLICATION NO. 62 OF 2022

Kabra Estate and investment Consultants

... Applicant/
Decree Holder/
Original Claimant

V/s.

The New Aarti Co-operative Housing
Society Limited

... Judgment Debtor/
Original Respondent

Mr. Sanjay Jain alongwith Mr. Nishant Sashidharan, Mr. Suraj Iyer and
Mr. Mani Thevar instructed by Ganesh & Co., Advocate for the
Applicant.

Mr. Anil R. Mishra, Advocate for the Respondent.

CORAM : ABHAY AHUJA, J.
DATE : 26 AUGUST, 2024

P.C. :

1. Pursuant to the order dated 12th August 2024, today when the
matter is called out, Mr. Mishra appears for the Respondent-Society and
seeks some time to take instructions in the matter.

2. On 12th August 2024, this Court passed the following order :

1. This Application seeks withdrawal of
amount deposited with the Prothonotary and
Senior Master of this Court on satisfying the

Award in favour of the Applicant. However, when the matter called out and Mr. Jain has made his rather convincing arguments in support of the Application, Mr. Kapadia, Chairman alongwith Mr. Rambhi, Secretary of the Society submit that their earlier lawyer has refused to appear in the matter and some time be granted to appoint another lawyer.

2. Accordingly, list on **26th August 2024 on the supplementary board.**

3. Let the Advocate be appointed by the Respondent-Society by the next date and let the said lawyer appear with complete instructions, failing which this Court will be constrained to pass appropriate orders.

3. A clear direction was given that the Advocate appointed by the Society to appear with complete instructions, failing which this Court would be constrained to pass appropriate orders.

4. Mr. Jain, learned Counsel appearing for the Applicant points out that by order dated 15th December 2023 of the Hon'ble Supreme Court after having considered that the Society had earlier deposited Rs.6 crores, directed the Society to make a further deposit Rs.8 crores and subject to the said deposit, the execution proceedings were stayed, however, observing that if the Society does not deposit the said amount, the Applicant herein would be entitled to execute the Award dated 26th October 2021. Mr. Jain points out that thereafter further

time was sought to deposit Rs.8 crores however the same was not deposited. It is only thereafter that this Application seeking withdrawal of the amount deposited with the Prothonotary and Senior Master which was deposited in a Appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996 has been filed.

5. Mr. Mishra points out that there is an Application under Section 34 of the Arbitration and Conciliation Act, 1996 challenging the Award which is pending and that this Court consider the same before passing any orders.

6. In the case of *Manish Vs. Godawari Marathwada Irrigation Development Corporation*¹, the Hon'ble Supreme Court has observed that in execution proceedings, the Judgment Creditor is entitled to withdraw the amount deposited in the Court, subject to furnishing of solvent security. This view has been followed by this Court in the case of *State of Maharashtra through Executive Engineer Vs. Patel Engineering Limited and Ors.*². Accordingly, having heard the learned Counsel and having considered the submissions, this Court permits the Applicant to withdraw the sum of Rs.6.90 crores alongwith accrued interest till date of withdrawal lying deposited with the Prothonotary & Senior Master in Arbitration Petition No.438 of 2015, subject to

1 SLP(s) 11760-11761 of 2018 decided on 16th July, 2018

2 2021 SCC Online Bom 12596

furnishing bank guarantee by the Applicant of a Nationalized Bank to the satisfaction of the Prothonotary & Senior Master of this Court alongwith an undertaking that in the event the monies are required to be brought back, the same will be brought back with interest within a period of two weeks.

7. The Application accordingly stands allowed and disposed as above.

(ABHAY AHUJA, J.)