



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

WRIT PETITION NO. 4804 OF 2024

e Generali India Life Insurance Co. Ltd, Nagpur Vs. Mr. Partha Sarathy s/o. Mr. Prakritiranjana Sarkar)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. D.V. Chavan, Senior Advocate assisted by Mr. N.R. Jadhav, Advocate for petitioner.
Mr. Partha Sarathy, respondent in person.

**CORAM : NITIN W. SAMBRE &
ABHAY J. MANTRI, JJ.**

DATED : 02-09-2024

The petitioner, judgment debtor/appellant in Regular Civil Appeal No. 206/2023 has approached this Court seeking direction to the learned Ad-hoc District Judge-4, Nagpur to decide expeditiously the Civil Application filed in Regular Civil Appeal No. 206/2023 (Exhibit – 6) preferred under the provisions of Order 41 Rule 5 of the Code of Civil Procedure. Further, stay of Special Darkhast No. 74/2024 arising out of the execution of the decree, which is a subject matter in the aforesaid appeal, is also sought.

2. This Court while ordering notice on 19.8.2024 recorded statement of the learned Senior Counsel for the petitioner that an amount of Rs. 4.00 Crores shall be deposited in this Court subject to which this Court has granted interim relief, thereby directing the executing Court not to proceed with the execution of the decree.

3. In compliance with the said order, during the course of hearing, learned Senior Counsel for the petitioner has placed on record a Pursis along with photocopy of the demand draft

drawn in favour of the Registrar, High Court of Bombay, Bench at Nagpur for an amount of Rs. 2.00 Crores in compliance with order dated 19/08/2024.

4. According to Mr. Chavan, learned Senior Counsel appearing for the petitioner/judgment debtor, the respondent/decreed holder has also taken out an application under Section 340 of the Criminal Procedure Code, which is pending consideration before the Appellate Court. According to learned Senior Counsel, the appellate Court has already heard the application (Exhibit 6) i.e. for grant of stay to the execution of the decree and same be directed to be decided expeditiously.

5. As against above, the party-in-person i.e. respondent herein made twofold submissions – (a) that since writ jurisdiction of this Court is invoked, the State Government is a necessary party and (b) law contemplates that the application moved under Section 340 of the Criminal Procedure Code should be decided first before deciding the proceedings in the form of appeal or interim application.

6. We have considered the aforesaid submissions.

7. We are sensitive to the fact that the petitioner has invoked the supervisory jurisdiction of this Court under Article 227 of the Constitution of India. The prayer is not against the State or its entity, but is securing direction to the subordinate Court. In such an eventuality, we are of the view that the State Government is not a necessary party.

8. As far as the contention of the party-in-person – respondent that the application moved under Section 340 of the Criminal Procedure Code is required to be decided first before deciding the stay application or an appeal, we leave it to the Appellate Court to follow the due process of law brought to its notice by the respective parties. However, since it is brought to our notice that the application for stay was finally heard and closed for orders on 12.2.2024, it shall be open for the Appellate Court to give its verdict on the application Exhibit-6 expeditiously and in any case, within a period of six weeks from the date of production of this order.

9. We also grant liberty to the respondent party-in-person to bring the position of law about priority to be granted to the hearing of application moved under Section 340 of the Code of Criminal Procedure and it is for the Appellate Court to deal with the said issue after hearing the respective parties without getting influenced by this order.

10. Till the order is pronounced on the said application (Exhibit-6), we direct the interim relief, which is ordered by this Court on 19.8.2024, to be continued.

11. With the above observations, the petition stands disposed of.

12. We make it clear that the amount, which is deposited in this Court, be forthwith transferred to the executing Court. The issue of apportionment of which shall be dealt with by the Appellate Court. The balance amount be deposited with the executing Court as has been undertaken on the last date of

hearing. Needless to clarify that the quantum of Rs.4.00 Crores is not upon any adjudication of the amount receivable by the decree holder or as such payable by the Judgment debtor. The same is without prejudice to the rival claim which parties can canvass before Appellate or Executing Court.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)

Belkhede