



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 12694 OF 2024
IN
FIRST APPEAL NO. 1341 OF 2024

Nalin Omprakash Pahuja.

...Applicant/Appellant.

Versus

Dinesh Somatmalji Dhokar.

...Respondent.

Mr. Ranjeev Carvallo, Mr. Sakshi Agarwal and Ms. Saloni Doshi for the Appellant.

Mr. Rajesh B. Doshi and Ms.Neha R. Doshi i/b Legal Juris for the Respondents.

Coram : Sharmila U. Deshmukh, J.

Date : March 17, 2025.

P. C. :

1. Interim Application has been filed seeking stay of the execution of decree passed by the City Civil Court in S.C.Suit No. 2162 of 2015. The said suit was filed by the Respondents herein for recovery of an amount of Rs.8,15,886/- along with interest @ 24% p.a..

2. Facts of the case are that Respondent-original Plaintiff had supplied goods to the Defendant and has raised 13 invoices for an amount of Rs.8,15,886/-. As payment was not made for the goods supplied, notice came to be issued to the Defendants and thereafter suit came to be filed. Defence of the Defendant was that goods were defective and hence the Defendants had re-conveyed the same to the

Plaintiff and in the process suffered damages. The trial Court upon consideration of evidence on record held that the plaintiff had proved the goods were delivered to the Defendant and that the Plaintiff was entitled to recover the sum of Rs.8,15,886/-. Though the Plaintiff claimed interest @ 24% p.a., the trial Court on consideration of the nature of transaction between the Plaintiffs and Defendants accepted that there was defect in the goods which were replaced and awarded interest @ 12% p.a.

3. By order of 7th October 2024 the Appellants were directed to take instructions as regards deposit of amount which according to the Court should be Rs.15 lakhs. This Court is informed that the said amount has been duly deposited by the Appellant.

4. Learned Counsel appearing for the Respondent would insist on the deposit of entire decretal amount along with accrued interest which according to him, amounts to Rs.22,70,864/- and would place reliance upon the decision of this Court in ***Hindustan Petroleum Corp. Ltd v. Navjeevan CHS Ltd***¹ and the decision of Apex Court in ***M/s. Malwa Strips Pvt. Ltd v. M/s. Jyoti Ltd***² to contend that while granting stay under the provisions of Order 41 Rule 1(3) and Rule 5(1) & (3) of CPC unless an exceptional case is made out for stay of the execution of money decree, the decree should not be stayed.

1 Civil WP No.24 of 2020, dtd 23-6-2020.

2 [2018] 17 SCR 1297.

5. I have considered the submissions and perused the record. The decree was for the principal sum of Rs.8,15,886/- and interest @ 12% p.a. from the date of suit till realisation.

6. While decreeing the suit, the finding of the trial Court is that there was defect in the goods which were replaced and therefore the trial Court has reduced the rate of interest from 24% to 12% p.a. It was the contention of Defendants during the course of proceedings that the Defendants had suffered damages due to replacement of goods which does not appear to have been taken into consideration by the trial Court upon a *prima facie* reading of the judgment.

7. The provisions of Order 41 of CPC, 1908 do not prohibit the grant of stay of the execution of decree and it is the discretion of the Court to grant stay upon such conditions as the Court deems fit. Ordinarily, in a money decree, deposit is the rule and the discretion is vested in the Court to direct deposit of such amount as it deems fit. In the present case, considering that the principal amount was Rs. 8,15,886/-, this Court had directed the Defendants to deposit the amount of Rs.15 lakhs which in the opinion of this Court secures more than substantial amount of decree.

8. As far as the decision relied upon by learned Counsel appearing for the Respondent in the case of ***M/s. Malwa Strips Pvt. Ltd v. M/s. Jyoti Ltd*** (supra) is concerned, there is no quarrel with the said

proposition. However, the facts are distinguishable as in that case, the money decree was stayed without direction of deposit.

9. In the present case, as the trial Court has accepted the finding of defect in goods required to be replaced, case has been made out by the Appellant and therefore the stay upon deposit of amount of Rs.15 lakhs is warranted.

10. As far as the decision in the case of ***Hindustan Petroleum Corp. Ltd v. Navjeevan CHS Ltd*** (supra) is concerned, the direction was passed in the facts of that case.

11. In the light of above, as the amount of Rs.15 lakh is already deposited, Interim Application is allowed in terms of prayer Clause (a).

[Sharmila U. Deshmukh, J.]