IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 14877 OF 2024
IN
FIRST APPEAL NO. 320 OF 2025

Avatar Singh Narang ...Applicant

In the matter between :

Avatar Singh Narang ...Appellant

Versus

Suresh Sharma and Others ...Respondents

Mr. Gautam Ankhad, Senior Advocate a/w Ms. Krupali Rajani, Hiral Thakkar, Aafreen S. Shaikh, Ms. Dipti Jadhav, Ms. Nikita Bhosale for the Applicant.
Mr. Ashok Singh, Mr. Pravin Singh and Mr. Sameer Bothre for Respondent No. 1.

Coram : Sharmila U. Deshmukh, J.

Date : 26th March, 2025.

P. C. :

1. Interim Application has been preferred seeking stay of the impugned judgment and decree dated 16th March, 2022 passed by the City Civil Court in Suit No. 8136 of 1999.

2. The First Appeal has been preferred challenging the judgment and decree of the Trial Court by which the present Applicant who was Defendant No. 3 was directed to pay sum of Rs. 23,50,000/- along with interest at the rate of 9% per annum by declaring that the Agreement dated 18th April, 1995 executed between the Plaintiff and Defendant

Nos. 2 to 4 is illegal and void *ab initio*. The First Appeal has already been admitted on 12th February, 2025 and the issue before the Court today is whether the stay is required to be granted by directing the deposit of the amount considering the decree is money decree.

3. Briefly stated, the facts of the case are that, the Plaintiff and the Defendants were directors of Defendant No. 1-Company. There were certain loans which were obtained from the financial institutions by the Defendant Nos. 2 to 4 and Memorandum of Understanding came to be executed on 19th April, 1995 in which the plaintiff agreed to purchase the shares and Defendant Nos. 2 to 4 which includes the present Applicant agreed to sell the shares of Defendant No. 1-Company and part payment was made. The said Agreement contained an Arbitration clause. Subsequently, dispute arose between the parties pursuant to which the plaintiff filed Suit No. 8136 of 1999 against the Defendants which included the present Applicant for declaration that the Agreement is bad in law and for recovery of the amount which was paid.

4. Learned counsel appearing for the Applicant submits that the Arbitration clause contained in the Memorandum of Understanding was invoked by the present Applicant and Application under Section 11 of the Arbitration and Conciliation Act, 1996 was filed before the Madhya Pradesh High Court in which the Arbitrator came to be appointed. He submits that on 19th June, 2006, award came to be passed in favor of the present Applicant for sum of Rs. 25,00,000/- along with interest. He submits that award came to be challenged under Section 34 and then under Section 37 of the Arbitration and Conciliation Act, 1996, which came to be dismissed. He submits that before the Apex Court, notice has been issued however, the Award has not been stayed. He submits that the Award is enforceable as decree and in that terms, he is a decree-holder as against the plaintiff.

5. *Per contra,* learned counsel appearing for Respondents submits that the Arbitration clause was considered by the Trial Court while decreeing the suit. He submits that though the Defendants were made party to the proceedings before the Trial Court, no Application under Section 8 of the Arbitration and Conciliation Act was filed, though Written Statement was filed. He submits that despite thereof proceedings were initiated under Arbitration and Conciliation Act. He submits that the Trial Court after considering the Arbitration proceedings have declared the Agreement to be null and void and have directed the present Applicant and other Defendants to make the payment. He submits that thus, the same is a money decree and deposit is the rule. He would further submit that under the Memorandum of Understanding executed, the shares of the company were sold to the plaintiff, which were within the lock-in period and there was certain loans taken from the financial institutions. He submits that in the proceedings before the Debt Recovery Tribunal, the present plaintiff has not been considered as a Director for the purpose of payment of loans. He submits that all these aspects were considered by the Trial Court while decreeing the suit.

6. I have considered the submissions and perused the record.

7. The present Appeal has been filed under the provisions of Order XLI, Rule 1 of Code of Civil Procedure, 1908 and Order XLI, Rule 1 (3) of CPC provides that where the Appeal is against a decree for payment of money, the Appellant shall within such time as the Appellate Court may allow, deposit the amount disputed in the Appeal or furnish such security in respect thereof as the Court may think fit. Rule 5 of Order XLI deals with 'Stay by Appellate Court'. Sub-rule (5) of Rule 5 provides that notwithstanding anything contained in the foregoing sub-rules, where the Appellant fails to make the deposit or furnish the security specified in sub-rule (3) of Rule 1, the Court shall not make an order staying the execution of the decree. However, by the Bombay Amendment to Rule 1 of Order XLI, proviso has been added that the Court may dispense with deposit or security where it deems fit for sufficient cause. Thus, there is discretion vested in the Court to waive the deposit for sufficient cause.

8. Against the background of the statutory provision, if the facts of the present case are seen, without going into the merits of the matter, the position which exists today is that the present Applicant is having an Award in his favor as against which the challenge under Sections 34 and 37 has been dismissed and Special Leave Petition is pending before the Apex Court. The order of 1st September, 2022 passed by the Apex Court records the statement made by the learned Advocate for the Plaintiff that he will not alienate his properties. It is also not disputed that there is no stay granted by the Hon'ble Apex Court to the Arbitral Award of 19th June, 2006. The award is thus, enforceable as a decree for payment of Rs. 25,00,000/- against the original plaintiff. Similarly, the plaintiff is a decree-holder against the present Applicant for a sum of Rs. 23,50,000/-. Considering that both are decree-holders as against each other in a sum which is almost equivalent, there is no necessity of securing the payment due under the decree. This is a fit case where discretion is to be exercised and the decree be stayed *qua* the present Applicant without requiring to secure the amount under the decree.

9. In light of the above, Interim Application is allowed in terms of prayer clause 'a' which reads thus:

> "a. This Hon'ble Court be pleased to stay the execution and implementation of impugned order dated 16.03.2022 passed by the City Civil Court at Bombay."

[Sharmila U. Deshmukh, J.]