

**ORDER BELOW EXH.38 IN SPECIAL DARKHAST NO.10/2020**

1. This application is filed by J.D. no.2 seeking permission of the court to deposit Rs.2,43,082/-. He contended that D.H. has obtained exparte decree against them. The said decree is illegal. He contended that plaintiff had supplied goods to V.K. Mishra Lifter and J.D. no.1 is the owner of V.K. Mishra Lifter. J.D. no.1 is also the owner of V.K. Mishra Transporters. This J.D. no.2 is the owner of Mishra Brothers. D.H. has supplied goods amounting to Rs.8,50,685/- to J.D. no.2. Accordingly J.D. no.2 has paid total amount of Rs.6,07,603/-. He is liable to pay an amount of Rs.2,43,082/- only. Thus he prayed that he be permitted to deposit said amount in the court.

2. D.H. has appeared and filed his say. D.H. contended that application is false and frivolous. J.D. no.2 is liable to pay the decretal amount. The court cannot go beyond the decree. Hence, prayed that application be rejected.

3. J.D. no.1 has also filed his say. He contended that J.D. no. 2 has put his burden and shifted his Bill in the name of J.D. no.1. Taking advantage of the lockdown plaintiff has obtained exparte decree. Hence prayed that application be rejected.

4. Considering rival contentions of both the parties following points arise for my determination and I record my findings thereon for the reasons mentioned below.

No.	POINTS	FINDINGS
1	Whether application is liable to be allowed?	... in the affirmative.
2	What Order ?	... As per order.

**:: REASONS ::**

**POINT NO.1. :-**

5. Heard learned Advocate for J.D. no.2 and Decree holder. It is an admitted fact on record that present D.H. had filed suit against J.D. no.1 and 2 for the recovery of loan of Rs.22,95,652-03 on 28-02-2018.

6. After considering the evidence my predecessor allowed the suit on 06-11-2019. The judgment was ex parte judgment. Till date no appeal is filed against the said decree. As per the decree J.D. no.1 and 2 are liable to pay an amount of Rs.22,95,652-03 along with interest @ 9.7 % from the date of application of the plaintiff within two months from the date of the order. As defendants failed to comply the said decree, hence, D.H. filed this Execution Petition for the recovery of amount.

7. By this application J.D. no.2 submitted that out of the decretal amount he is liable to pay only Rs.2,43,082/- to D.H. What amount is payable by J.D. no.2 is the matter of merit, but at this stage J.D. no.2 is liable to pay the decretal amount. He is ready to pay an amount of Rs.2,43,082/-. Thus, considering the willingness of J.D. no.2 to pay the amount, hence, the application needs to be allowed without prejudice to the right of parties. Hence, in view of above discussion I answer point no.1 in the affirmative and in answer to point no.2 I pass the following order.

**:: ORDER ::**

1. Application is allowed.
2. J.D. no. 2 is permitted to deposit an amount of Rs.2,43,082/- in the court towards the decree without prejudice to the right of the D.H./plaintiff.

Panvel,  
Date : 19-06-2023.

(Nayomi P. Pawar)  
Civil Judge, Senior Division Panvel.