

(CNR No.:MHSN02-00-1838-2019)
ORDER BELOW EXHIBIT 18 IN SPECIAL DARKHAST
NO.30/2019
(Order dated 28/01/2020)

The decree holder filed this application under Order 21 Rule 43 and 46 of Civil Procedure Code (Here-in-after referred as "C.P.C.").

2. According to decree holder the present execution petition is filed in view of judgment and decree passed by Hon'ble District Judge-1, Sangli on 20.06.2019. Already sufficient opportunity has been given to J.D. to deposit the amount but they failed. Therefore decree holder has prayed to attach bank accounts of J.D. Decree holder has further given the specifications of bank accounts of J.D.

3. J.D. have filed their say at Exh.23 and raised strong objection. According to them in view of judgment and decree passed in Spl.C.S.140/2009 they have already deposited Rs.18,32,013/- along with interest of Rs.8,70,209/- in total amount of 27,02,222/- in Court. Decree holder has withdrawn the said amount. J.D. have preferred second appeal against the judgment and decree passed in R.C.A.No.377/2016 and R.C.A.No.32/2018. The second appeal is listed for first hearing in first week of January, 2020. Decree holder has not made out sufficient ground to grant garnishee order. J.D. have raised bonafide dispute. Their claim is not false and frivolous and therefore no garnishee order can be passed. Therefore J.D. have prayed to reject the application.

4. I have heard D.H. and learned counsel appearing on behalf of J.D. at considerable length. I have carefully gone through the proceeding, documents on record.

5. On perusal of the record it reveals that decree holder had instituted Special Civil Suit No.140/2009 for recovery of work contract tax amount of Rs.18,32,013/- along with interest at the rate of 18% p.a. Accordingly the suit was partly decreed and J.D. were directed to pay an amount of Rs.18,32,013/- with simple interest at the rate of 18% p.a. from the date of the suit till realisation of the amount. Thus plaintiff and defendants preferred first appeal bearing R.C.A. No.32/2018 and R.C.A.No.377/2016. Hon'ble District Court has dismissed R.C.A.No.377/2016 and partly decreed R.C.A.No.32/2018. By way of judgment and decree in R.C.A.No.32/2018 defendants directed to pay an amount of Rs.18,32,013/- along with interest at the rate of 10% p.a. compound from the date of claim till the date of filing of the suit i.e. on 29.04.2009 and further directed to pay interest on decreed amount at the rate of 15% p.a. compound from the date of filing of the suit i.e. on 30.04.2009 till the realisation of entire amount. It reveals that the decree and judgment of the Trial Court has been modified in R.C.A.No.32/2018 and thereby defendants directed to pay compound interest. The present execution petition is filed for recovery of such compound interest. Decree holder has given specifications of compound interest as per order in application at Exh.1. J.D. have not disputed the calculation of compound interest in Exh.1.

6. According to J.D. they have preferred second appeal and they have already paid original decreed amount along with interest. Therefore J.D. has received certain amount towards money decree. Thereafter J.D. have produced case details of second appeal along with their say. On perusal of the case details it reveals that J.D. have preferred second appeal and same is adjourned for pre-admission stage. It shows that J.D. have filed second appeal and it is listed for argument for admission in first week of January.

7. So far as attachment of bank accounts of J.D. is concerned, decree holder has not denied that J.D. have paid an amount of Rs.26,00,000/- towards original decree. Now D.H. is asking for interest as granted in R.C.A.No.32/2018. Apparently it reveals that D.H. has received certain amount towards money decree. Now there is question of recovery of interest on decretal amount. No doubt in first appeal Hon'ble District Judge-1 has granted interest at the rate of 10% and 15% interest for specific period. Thus J.D. have preferred second appeal against the judgment and decree passed in R.C.A.No.32/2018. In these circumstances no stringent, strict order can be passed against J.D. No doubt in view of judgment and decree in R.C.A.No.32/2018 the decree holder is entitled to recover an amount of interest. However, decree holder has received certain amount towards money decree. Moreover second appeal is listed for first argument. In such circumstances it would be proper to grant some time to J.D.

8. Decree holder has not made out malicious intention of

J.D. as they ever not intended to pay any amount to decree holder towards discharge of money decree. J.D. wanted to raise bonafide dispute regarding interest granted in R.C.A.No.32/2018. In such circumstances it would not be proper to attach bank accounts of J.D. Hence, I proceed to pass the following order :-

ORDER.

An application is rejected with cost.

Sangli. (Manisha N. Chavan)
Date: 28/01/2020. VIIth Joint Civil Judge Senior Division,
Sangli.

I affirm that the contents of this P.D.F. file Judgment/Order are same, word to word, as per the original judgment.

Name of the Stenographer	:	S. W. Pathan.
Court	:	7 th Jt.C.J.S.D. & Addl. C.J.M., Sangli.
Judgment/Order declared on	:	28.01.2020
Judgment/Order signed by the Presiding Officer on	:	28.01.2020
Judgment/Order uploaded on	:	30.01.2020