



Order below Exh.33 in
Special Darkhast No.30/2019

(M/s. C.R. Constructions etc. Vs. Maharashtra Jeevan Pradhikaran etc.)

1. Earlier this Darkhast was pending in this Court. In June 2021, this Darkhast was transferred to the Court of 7th Jt.C.J.S.D., Sangli. Before the said transfer I have heard the arguments of D.H. in person and learned counsel for J.Ds' on this application. Therefore, there is no necessity to hear the arguments again on this application.
2. Perused the application and say of J.Ds' at Exh.38. Heard D.H. personally, learned counsel for J.Ds'. Gone through the whole record carefully.
3. In short, it is contention of D.H. in this application that, J.Ds' are under obligation to pay an amount of Rs.1,05,03,293/- to D.H. as on 29.12.2020 as per decree in R.C.A No.32/2018 and calculation of it is attached through separate Ferist. It is further contention of D.H. that account details of J.Ds' in State Bank of India are follows.

Sr.No.	Account No.	Name of Account
1.	11230240325	Saving, Exe. Eng. MJP Urban and Rural
2.	32322298083	Saving, Tender Sales & Fine recovery collection.
3.	32322298583	Savings Technical Charges and collection
4.	32322299122	Saving, Water charges Popular Contion, Collection .
5.	32322299564	Saving, full Deposit, collection .
6.	36977284564	STDR
7.	36977577887	Bank Guarantee.
8.	11230240314	Savings, Exe. Eng. MJP Rural and Urban.

4. D.H. prayed to attach above bank accounts of J.Ds' and direct to concerned Manager of above bank to deposit above mentioned amounts in this court.

5. J.Ds' in their say at Exh.38 denied this application. They prayed to reject the application.

6. On perusal of record, it is seen that, in Special Civil Suit No.140/2009 there was an order directing the J.Ds' to pay amount of Rs.18,32,013/- along-with simple interest @ 18% p.a. from the date of suit till realization of that amount. Being aggrieved by the Judgment in Special Civil Suit No.140/2009, the J.Ds' had preferred an Regular Appeal No.377/2016 and D.H. has preferred Regular Civil Appeal No.32/2018 in the Hon'ble District Court. The Hon'ble District Court by its Judgment dt.20.06.2019 dismissed Regular Civil Appeal No.377/2016 and partly allowed Civil Appeal No.32/2018 and granted compound interest at the rate of 10% p.a. on amount of Rs.18,32,013/- from the date of claim i.e 29.07.2002 till filing of suit i.e. 29.04.2009 and 15% p.a. compound interest on Rs.18,32,013/- from the date of filing of the suit i.e. 30.04.2009 till realization of said amount.

7. Now, the question is whether there is a stay to this Darkhast from Hon'ble Bombay High Court today. On perusal of record, it is seen that the Hon'ble Bombay High Court had given stay to this Darkhast by passing an order on 7th April, , 2021 in Second Appeal No.149/2021. In the said order the Hon'ble Bombay High Court had given stay only upto 30.06.2021. In the said order in Para (3) the words specifically "till the next date" are used, that means the stay to this Darkhast was only upto 30.06.2021. On perusal of record, it is seen that, the J.Ds' have not get extended the said stay order from Hon'ble Bombay High Court from 30.06.2021. Furthermore, there was stay of

Hon'ble Bombay High Court in Suo moto Public Interest Litigation No.1/2021, but the protection given in the said P.I.L. was vacated on 08.10.2021. That can be seen from the document at list Exh.70/2, that means the J.Ds' ought to have brought the stay of Hon'ble Bombay High Court after 12.10.2021. Therefore, the J.Ds' have failed to get extend the stay to this Darkhast from Hon'ble Bombay High Court, since 30.06.2021. Merely because the J.Ds' have furnished the Bank Guarantee, do not mean that there is a stay to this proceeding from Hon'ble Bombay High Court automatically.

8. I have gone through the calculation given by D.H. as well as Chartered Accountant Shri.Milind Sathe produced by J.Ds' along-with list at Exh.29. It appears that, calculation which is made by D.H. is correct.

9. There is an information produced by State Bank of India, Br.Ganpati Temple, Sangli along-with list Exh.46 which shows various account numbers type and balance amount of J.Ds' in it. J.Ds' in their written argument at Exh.47 stated that savings account No.11230240314 of J.Ds' at Sr. No.8 in the information of State Bank of India produced along-with list at Exh.46 pertains to the Salary and Bhatta of employees of J.Ds' and Salary and Bhatta use to be paid out of that amount. Learned counsel for J.Ds' submitted that as per 60 of Code of Civil Procedure that account should not attached. D.H. submitted that other accounts can be attached by giving up this account. There is a hurdle of Section 60 of Code of Civil Procedure to attach the said account as it pertains to Salary and Bhatta of employees of J.Ds'. We will consider other accounts. J.Ds' in their written argument stated that account No.11230240325 at Sr.No.1 in a list attached to Exh.46 pertains to Rural project and in it amount required to pay electric bill and maintenance and repair bills of Tananga Tap Water supply use to

be deposited. If those are attached; it will not be possible to pay electricity bill then electric supply will be disconnected and water supply to 7 hamlets will be stopped. But J.Ds' have to pay decretal amount to D.H. and they have to make necessary alternative arrangements for payment of said electricity bill and maintenance and repairs bills.

10. J.Ds' in their written argument at Exh.47 further stated that account No.98258004718 pertains to Nangole Tap Water Supply project as to tender and as per order of Hon'ble Mumbai High Court for Bank Guarantee J.Ds' have deposited as term deposit amount of Rs.53,52,250/- as said proceeding is pending and Bank Guarantee is in the custody of the Court, if there would be attachment of it, then there will be hurdle in future. So said Bank account is not attachable.

11. In **Indusind Bank Vs. Lt. Col. M.P.S. Bhatia & Anr.**, [Ex. FA No.14/2016] **Hon'ble Delhi High Court**, the question before Hon'ble High Court was whether the Fixed Deposit amount towards the Bank given for issuance of Bank Guarantee can be attached in execution of a decree by the Court. In it, it is held that the executing Court cannot attach the Fixed Deposit amount which is deposited by the J.D. for securing/receiving the Bank Guarantee from the Bank. Therefore, as per law laid down in this ruling, the Fixed Deposit mentioned at Sr.No.6 at Exh.46/1 cannot be attached as sought by the D.H.

12. In this ruling the respondent no.1/D.H. had filed a execution petition for getting the amount of Rs.7,47,513/- from the J.D./respondent no.2. The Appellant Bank had issued the Bank Guarantee in favour of Union of India and for that purpose it had took Fixed Deposit amount from respondent no.2/J.D. An attachment order was passed by the Trial Court attaching the said fixed amount in the

Bank. The said order was set aside by Hon'ble High Court. The Hon'ble High Court made observations in the said ruling as follows.

“The garnishee or debtor's debtor is bound by the attachment order with respect to the property of the judgment debtor lying with the garnishee only if the garnishee has no right over the property of the judgment debtor. If the garnishee has a right on the property of the judgment debtor lying with the garnishee then no valid attachment can be issued with respect to the property lying with the garnishee and objections can be thus filed by the garnishee and once the court finds that garnishee has a valid right to the property of the judgment debtor lying with the garnishee then the attachment order has to necessarily fail.”

13. The Hon'ble High Court in this ruling held that as the Fixed Deposit means the deposits which are taken by Bank for issuing the Bank Guarantee could not even validly attached by the executing Court.

14. In an information attached with Exh.46, it is mentioned Sr.No.7 as Bank Guarantee. That means, the Bank has given it to third person for satisfying the amount owed by J.D. and that amount is not payable to J.D. So, it cannot be attached. Therefore, amounts mentioned in Account number at Sr.No.1 to 5 in an information by State Bank of India attached with Exh.46 can be attached and can be directed to State Bank of India, Br.Ganpati Temple, Sangli, to deposit the amount along-with interest if any on the said amount till today in this Court, as per Order 21 Rule 30 and 46 of Code of Civil Procedure, 1908 for the payment of dues from J.Ds' to be payable to D.H.

15. On perusal of order of Hon'ble Bombay High Court in Second Appeal No.149/2021 dated 7th April, 2021 it is seen that, there was statement of counsel for J.Ds' in it that the amount due was Rs.75,14,351/- and J.Ds' have already deposited Rs.27,02,222/- and by accepting the said statement by Hon'ble High Court, it passed an order

of furnishing the Bank Guarantee of Rs.48,12,129/- But, the calculation given by D.H. at Exh.34/3 is correct and the present Darkhast is for compound interest of 10% p.a. from 29/07/2002 to the date of filing of suit and compound interest of 15% p.a. on it from 30/04/2009 to realization of the said amount and that amount comes to Rs.1,05,03,293/- So, it is seen that, the J.Ds' have not paid the interest amount from 29/07/2002 at the rate as per the Order in R.C.A.No.32/2018.

16. The J.D's have furnished the Bank Guarantee of Rs.24,06,100/-, therefore that amount is secured in favour of D.H. That means, that amount is towards this Court. If the Second Appeal No.149/2021 before the Hon'ble High Court become dismissed or if the Hon'ble High Court directs this Court to pay the said amount to D.H., then he is entitle for it, so for the said amount i.e. Rs.24,06,100/- the attachment cannot be done. Therefore, after deducting Rs.24,06,100/- out of Rs.1,05,03,293/- attachment can be made for the amount of Rs.80,87,193/-

17. On perusal of record, it is seen that, the amount of Rs.27,02,222/- which the J.Ds' are saying that they have paid to D.H., is the amount given/deposited by them for satisfaction of decree in Spl.C.S.No.140/2009. They have not deposited/paid the said amount for the execution of decree in R.C.A.No.32/2018. It is seen that in decree in Spl.C.S.No.140/2009 this Court had granted interest at the rate of 18% p.a. from the date of the suit i.e. 30.04.2009 on Rs.18,32,013/- till realization of that amount. In R.C.A.No.32/2018 Hon'ble District Court has by partly allowing appeal granted compound interest of 15% p.a. on Rs.18,32,013/- from 30.04.2009. Therefore, D.H. is not entitle to simple interest of 18% p.a. as well as 15% p.a. on Rs.18,32,013/- from 30.04.2009. The order of Hon'ble District Court in

R.C.A.No.32/2018 granting 15% p.a. compound interest from 30.04.2009 on Rs.18,32,013/- implies that the earlier order of this Court in Spl.C.S.No.140/2009 granting 18% p.a. simple interest on the said amount from 30/04/2009 is set aside (though specifically not stated in that order). On verification of account which is available in this Court, it is seen that J.Ds' have deposited an amount of Rs.18,32,013/- on 27.12.2011 vide "C" No.739 and Rs.8,70,902/- on 28.12.2011 vide "C" No.740 i.e. in total Rs.27,02,915/- for fulfillment of decree in Spl.C.S.No.140/2009 and out of that J.Ds' have deposited Rs.8,70,902/- towards the interest, that amount of interest is necessary to be deducted from the total amount of Rs.80,97,193/-, as the D.H. has calculated the compound interest at the rate of 15% p.a. on Rs.18,32,013/- from 30.04.2009 in this Darkhast. On 10.01.2012 the D.H. has withdrawn amount of Rs.8,70,902/- vide "D" No.880. Therefore, D.H. is entitled for the amount of Rs.72,26,291/- from J.D.

18. J.Ds' are under obligation to pay an amount of Rs.72,26,291/- as on 29.12.2020, a sheet of calculation to that effect is filed by D.H. at Exh.34/3 after depositing amount by State Bank of India, Br. Ganpati Temple, Sangli, if that amount exceeds amount to be payable to the D.H., then remaining amount can be paid to J.Ds'. Therefore, first a direction to State Bank of India, Branch Ganpati Temple, Sangli to deposit the amount towards it of J.Ds' is necessary.

19. In view of above reasons and discussion, I proceed to pass following order.

ORDER

1. The following amounts mentioned in following accounts of J.Ds' in State Bank of India, Branch Ganpati Temple, Sangli are hereby attached as per Order XXI Rule 30 & 46 of Code of Civil Procedure, 1908.

Sr.No.	Account No.	Account type	Balance as on 22.02.2021
1	11230240325	Savings	3,46,859.34
2	32322298083	Savings	1,000.00
3	32322298583	Savings	1,000.00
4	32322299122	Savings	1,000.00
5	32322299564	Savings	1,500.00

2. State Bank of India, Branch Ganpati Temple, Sangli is hereby directed to deposit the amounts mentioned in the accounts above in clause No.1 along-with interest accrued on them till today in this court as per Order 46 Rule 30 of Code of Civil Procedure on or before next date.
3. J.Ds' are hereby prohibited from recovery of the above mentioned amounts from above mentioned accounts from State Bank of India, Br.Ganpati Temple, Sangli is hereby prohibited from making payment of the said amounts from said accounts to J.Ds' as per Order 21 Rule 46(1)(i) of Code of Civil Procedure 1908.
4. Issue a letter accordingly to State Bank of India, Br.Ganpati Temple, Sangli.

Sangli
Date : 06/01/2022.

Sd/xx
(L.D.Huli)
Civil Judge Sr.Dn., Sangli.

CERTIFICATE

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

Name of Stenographer : G.S.Parve

Court : Civil Judge Sr.Dn., Sangli

Date : 06/01/2022

Signed by the Presiding Officer : 06/01/2022
on

Uploaded on : 07/01/2022