

ITEM NO.25

COURT NO.5

SECTION XV

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 11233/2024

(Arising out of impugned judgment and order dated 20-03-2024 in DBCMA No. 753/2024 passed by the High Court of Judicature for Rajasthan at Jodhpur)

SHEKHAWATI ART AND EXPORTS

Petitioner(s)

VERSUS

UNITED INDIA INSURANCE COMPANY LTD &amp; ORS.

Respondent(s)

(IA No.116279/2024-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.116278/2024-EXEMPTION FROM FILING O.T.)

Date : 17-05-2024 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE HRISHIKESH ROY  
HON'BLE MR. JUSTICE PRASHANT KUMAR MISHRA

For Petitioner(s) Mr. K. Paari Vendhan, AOR  
Mr. Rishabh Sancheti, Adv.  
Ms. Padma Priya, Adv.  
Mr. Garvit Sharma, Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following  
O R D E R

1. Heard Mr. Rishabh Sancheti, learned counsel appearing for the petitioner (Decree holder) in whose favour the Commercial Court, No.2, Jodhpur decreed the suit and declared that the plaintiff is entitled to receive Rs.1.98 crore from the insurer plus additional amount, towards interest.
2. However, on the appeal filed by the insurance company, the Division Bench under the impugned interim order (dated 20.03.2024), stayed the effect and operation of the decree in favour of the plaintiff in the Civil Original Suit No.26/2021 and also stayed the

execution of the decree. The counsel argues that such blanket interim order could not have been passed in entertaining the appeal against a money decree relies on the ratio in *Sihor Nagar Palika Bureau Vs. Bhabhlubhai* [(2005) 4 SCC 1 and more particularly the following passage in the same judgment:

"6. Order 41 Rule 1(3) CPC provides that in an appeal against a decree for payment of amount the appellant shall, within the time permitted by the appellate court, deposit the amount disputed by the appeal or furnish such security in respect thereof as the court may think fit. *Under Order 41 Rule 5(5), a deposit or security, as abovesaid, is a condition precedent for an order by the appellate court staying the execution of the decree.* A bare reading of the two provisions referred to hereinabove, shows a discretion having been conferred on the appellate court to direct either deposit of the amount disputed in the appeal or to permit such security in respect thereof being furnished as the appellate court may think fit. Needless to say that the discretion is to be exercised judicially and not of a given case. *Ordinarily, execution of a money decree does not amount to irreparable injury and in the event of the appeal being allowed, the remedy of restitution is always available to the successful party.* Still the power is there, of course a discretionary power, and is meant to be exercised in appropriate cases."

3. The ratio in the above cited judgment applies to interim orders on challenge to a money decree. Similar view was also taken by the in *Kanpur Jal Sansthan and Anr Vs. Bapu Constructions* [(2015) 5 SCC 267]. Placing reliance on the above ratio, Mr. Sancheti would submit that the High Court should reconsider the terms of the interim order.

4. Finding merit in the above decision, we deem it appropriate to request the High Court to reconsider the interim order, bearing in mind that the challenge was to a money decree and whether a blanket

stay is merited without requiring the judgment debtors to deposit a part of the money decree. The petitioner is at liberty to move an appropriate application for clarification of the impugned interim order, in light of the above observation.

5. The Special Leave Petition stands disposed of.

6. Pending application(s), if any, shall stand disposed of.

(GEETA JOSHI)  
SENIOR PERSONAL ASSISTANT

(KAMLESH RAWAT)  
ASSISTANT REGISTRAR