

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4445 OF 2008

[Arising out of SLP(C) No.4193/2007]

RAMA AUTOMOBILES ... **APPELLANT(S)**

:VERSUS:

KAILASH MOTORS FINANCE LTD. AND ORS. ... **RESPONDENT(S)**

ORDER

Leave granted.

The only question which arises for our consideration is as to whether the High Court was right in directing the appellant to deposit the entire decretal amount.

Mr. Mariaputham, learned counsel appearing on behalf of the appellant would submit that the High Court committed a serious error in issuing the said direction as it failed to take into consideration the proviso appended to Sub-rule (3) of Rule 1 of Order 41 of the Code of Civil Procedure (CPC), as amended by the State of Maharashtra, which is in the following terms:

“Provided that the Court may dispense with the deposit or security where it deems fit to do so for sufficient cause.”

It is true that the High Court in its order did not consider this aspect of the matter, as it was of the opinion that the entire decretal amount should be deposited and then and then only the operation of the decree can be stayed.

However, in view of the proviso appended to Sub-rule (3) of Rule 1 of Order 41 of CPC, it is evident that sufficient cause must exist for issuing such a direction.

Having heard the learned counsel for the parties and having perused the petition and the counter affidavit, we are of the opinion that there does not exist any cause far less sufficient cause to invoke the proviso.

We, therefore, uphold the order of the High Court. However, the appellant is given eight weeks' time to deposit the balance amount as it is stated at the Bar that 50% of the principal amount has already been deposited.

The appeal is dismissed with the aforementioned direction.

**.....J
(S.B. SINHA)**

**.....J
(CYRIAC JOSEPH)**

**NEW DELHI,
JULY 14, 2008.**