

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CIVIL APPLICATION NO. 4759 OF 2015
IN
CIVIL APPLICATION NO. 7348 OF 2014
IN
FIRST APPEAL NO. 1530 OF 2013

Raghubai Dhondiba Ghayal
Since deceased. Through legal heirs,
Rukhminibai Vithal Jejurkar ... Applicant

Versus

The Divisional Controller,
Maharashtra State Road Transport Corporation,
Ahmednagar Division, Ahmednagar and another ... Respondents

Mr. R. R. Karpe, Advocate for applicant
Mr. D. S. Bagul, Advocate for respondent No.1

CORAM : SUNIL P. DESHMUKH, J.
3RD JULY, 2015

ORDER

1. This application has been moved by the applicant-original respondent in first appeal, seeking modification in the order dated 21-11-2014 passed in civil application No. 7348 of 2014.

Paragraphs No. 3 (a) and (b) of the order read thus;

(a) From the amount which has been deposited in this court by the appellant, only fifty per cent amount is allowed to be withdrawn by applicant-respondent no. 1 in appeal who claims to be only legal heir of the deceased-original claimant.

(b) Twenty five percent amount from fifty per cent amount which is allowed to be withdrawn, will be

withdrawn on furnishing solvent security to the satisfaction of the Registrar (judicial) of this court.

2. According to learned counsel, while the amount under clause (b) of said order was sought to be withdrawn, an understanding was given to the applicant that solvent security for the entire amount under the award would be required. He submits, that becomes onerous condition. He therefore seeks clarification that the same be deemed to be restricted to furnishing the same to the extent of amount being withdrawn under clause (b).

3. It is thus, clarified, for the amount being withdrawn under clause (b), solvent security to the extent of amount sought to be withdrawn would be required.

4. As far as clause 3 (c) of said order is concerned, learned counsel for the applicant submits that the same also operates as an onerous condition as, if the amount is to be withdrawn under bank guarantee, almost equivalent amount is required to be deposited in the bank which is hardly possible.

5. Learned counsel for the applicant draws attention to an order passed by Division Bench in Civil Application No. 9778 of 2014 in First Appeal No. 859 of 2005 on 27-03-2015, whereunder modification to earlier order was allowed and the applicants therein were permitted to withdraw the amount on undertaking.

6. Since the veracity of the contentions is not being seriously disputed and having regard to the age of applicant, I deem it appropriate that rigor of bank guarantee need not be insisted upon under the circumstances of the case and the applicant be allowed to withdraw amount under clause (c) of order dated 21-11-2014 referred to above, by accepting an undertaking from her that in the event the appeal is decided in favour of the appellant, the applicant would redeposit the amount withdrawn in this court within a period of six weeks from the date of decision in the appeal as contained in order of division bench referred to above.

7. As such, order dated 21-11-2014 in civil application No. 7348 of 2014 is and shall be deemed to have been modified accordingly.

8. Civil application stands disposed of.

SUNIL P. DESHMUKH, J.

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