

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.1092 OF 2015
IN
FIRST APPEAL NO.2392 OF 2015**

Ujwalla Rajendra Kini and Ors. .. Applicants

vs.

Piyush Ramesh Popat and Anr. .. Respondents

Mr.Omkar Warange for the applicants

Mr.Sudam Kale i/b Mr.S.K.Shinde for the respondents

**CORAM : K.K.TATED, J.
DATED : 17/06/2015**

PC:

- 1 Heard the learned counsel for the parties.
- 2 This application is preferred by plaintiffs for withdrawal of the amount deposited by the respondent nos.1 to 4 original defendants in the Trial Court pursuant to the order passed by this court.
- 3 The learned counsel for the applicant submits that applicant is a household wife. After the death of her husband, she does not have any source of income. It is very difficult for her to maintain herself as two minor children. He submits that applicant has to maintain two minor children as well as bear their expenses of education. He submits that in

the interest of justice this Hon'ble Court be pleased to allow the applicant to withdraw the amount deposited by respondent nos.1 to 4. If this application is not allowed, irreparable loss and injury will be caused to the applicants.

4 On the other hand, the learned counsel for the applicant vehemently opposed the present Civil Application. He submits that if entire amount is withdrawn by the applicants, nothing will survive in the present proceeding. He submits that if this court allows the applicant to withdraw the amount deposited by them, in that case, the plaintiffs be directed to provide solvent security to the satisfaction of the Trial Court,

5 It is to be noted that in the present proceeding, due to electrocution, plaintiff no.1 lost her husband. On the date of accident he was 34 years old. Applicant has to maintain her two minor children. She has to spend for their education and other expenses. Considering the submissions made by the learned counsel for the applicant and the averments made in Civil Application, I am satisfied that at present, the applicant has made out a case for allowing them to withdraw some amount without furnishing any security. Hence, following order:

A) Applicant no.1, Ujwalla Rajendra Kini is entitled to withdraw 1/3rd amount deposited by the appellant /defendant nos.2 to 5 in the Trial Court without furnishing solvent security but subject to outcome of the present First Appeal.

B) Tribunal is directed to invest remaining amount equally in the name of applicant no.2, Kum.Nidhi Rajendra Kini and applicant no.3, Kum.Manas Rajendra Kini in fixed deposit of any nationalised bank initially for a period of one year and same be continued till the hearing and final disposal of the First Appeal.

C) Liberty granted to applicant nos.2 and 3 to prefer appropriate application for withdrawal of the amount, if they so desire, as and when they attain majority and that application will be decided on its own merits.

D) Civil Application is disposed of accordingly.

(K.K.TATED, J.)