

**FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE JURISDICTION.**

**CIVIL APPLICATION NO. 2094 OF 2015
IN
FIRST APPEAL NO. 1490 OF 2014**

Dr. Rajeev Keshav Joshi	... Applicant
V/s.	
The State of Maharashtra	... Respondent

Mr. Kishor Patil for the applicant
Mr. Rajan Pawar, AGP for the respondent.

**CORAM : K. K. TATED, J.
DATED : 24/07/2015.**

P.C.:

. Heard learned Counsel for the parties.

2 This application is preferred by plaintiff for allowing him to withdraw sum of Rs.1,00,000/- with accrued interest deposited by the Appellant/defendant in Trial Court pursuant to the order passed by this Court on 09.01.2015 in Civil Application no. 4313 of 2014.

3 The learned Counsel for the plaintiff submits that plaintiff filed Special Civil Suit no. 77 of 2010 in the Court of Civil Judge, Senior Division, Kalyan for damages and compensation worth of Rs.15,00,000/-. He submits that the Trial Court decreed the said suit for Rs.1,00,000/- with 6% interest. He submits that the plaintiff as well as defendant both of them have filed First Appeal in this Court. He submits that plaintiff has filed First Appeal no. 38 of 2015 for

remaining claim, whereas, the present First Appeal is preferred by defendant State of Maharashtra challenging the decree passed by the Trial Court.

4 The learned Counsel for the applicant submits that applicant is Senior Citizen and he requires the said money for his day-to-day maintenance. He further submits that it is very difficult for the applicant because of his old age to maintain himself. Hence, this Hon'ble Court be pleased to allow the applicant to withdraw the amount deposited by the defendant in Trial Court.

5 On the other hand, the learned AGP appearing on behalf of defendant/State of Maharashtra vehemently opposed the present Civil Application. He submits that if entire amount is withdrawn by the plaintiff without furnishing any security, then nothing survives in their First Appeal. He submits that they have good chance of success in the First Appeal. He submits that if appellant succeeds in this appeal, in that case it will be very difficult for them to recover the said amount from the plaintiff. Hence, this Hon'ble Court be pleased to dismiss the present Civil Application.

6 I heard both the sides at length. It is to be noted that as of today the Trial Court passed money decree in favour of the plaintiff. Considering the submissions made by the learned Counsel for the plaintiff and the reasons disclosed in Civil Application, I am satisfied that applicant is entitled to withdraw the amount deposited by the defendant in the Trial Court, but at the same time, plaintiff has to

furnish solvent security to the satisfaction of the Trial Court.

7 Hence, the following order:

a) Applicant plaintiff Dr. Rajeev Keshav Joshi is permitted to withdraw sum of Rs.1,00,000/- with accrued interest from the Trial Court on furnishing solvent security to the satisfaction of the Trial Court.

b) Trial Court is directed to give notice to the defendant before accepting the solvent security.

c) If solvent security provided by the plaintiff that should be continued till the hearing and final disposal of the First Appeal.

d) Civil Application stands disposed of accordingly.

(K.K.TATED, J.)