

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

**CIVIL APPLICATION NO. 1894 OF 2014
IN
FIRST APPEAL NO. 479 OF 2013**

M/s. Jyoti Construction Company .. Applicant
Through its partner (Org. Respondent)
Mr. Sham Jivatram Shamdasani

IN THE MATTER BETWEEN

City and Industrial Development & Anr. .. Appellants
(Org. Appellants)

V/s.

M/s. Jyoti Construction Company
Through its partner
Mr. Sham Jivatram Shamdasani .. Respondent

Mr. Rahul Damodar Motkari for applicant.
Mr. G.S. Hegde i/by M/s. G.S. Hegde & Associates for
appellant/respondent no. 1.

**CORAM : ABHAY S. OKA &
A.P. BHANGALE, J.J.**

DATE : 16TH APRIL, 2015

P.C.

1. Heard learned counsel appearing for the applicant and the learned counsel appearing for the 1st respondent. The 1st respondent is the original defendant and the applicant is the Original plaintiff (the respondent in the appeal). The 1st respondent is the appellant.

2. The first appeal has been admitted and the decretal amount has been deposited by the appellant in the Trial Court. The prayer in this application is for grant of permission for withdrawal of the amount.

3. Learned counsel appearing for the 1st respondent-appellant submits that even if the applicant furnishes security for the entire decretal amount, the recovery of interest on the said amount will be impossible in the event the 1st respondent succeeds in the appeal. There is some merit in the said contention. Hence, we dispose of this application by passing the following order.

: ORDER :

1) It will be open for the applicant to withdraw the decretal amount deposited in the Trial Court on furnishing security to the satisfaction of the learned Trial Judge for the entire decretal amount together with interest at the rate of 9% per annum on the decretal amount for a period of ten years;

2) We make it clear that security shall not be accepted by the learned Trial Judge without granting an opportunity of being heard to the 1st respondent;

3) On the failure of the applicant to furnish security as aforesaid within period of 6 months from today, the decretal amount shall be invested in a fixed deposit in any Nationalized Bank till the disposal of this appeal.

4) Application is disposed of accordingly on the above terms.

[A.P. BHANGALE, J.]

[ABHAY S. OKA, J.]