

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

**CIVIL APPLICATION NO.2273 OF 2014
IN
FIRST APPEAL NO.1854 OF 2013**

Ms.Tanja Glusica & Ors. .. Applicants

Vs.

Air India Charters Limtied .. Respondent

Mr.B.K.Ashok for the applicant

Mr.Firoz Bharucha with Ms.Tanaz Hataria i/b M/s.Mulla and Mulla
for the appellant

**CORAM : K.K.TATED, J.
DATED : 11/02/2015**

PC:

1 Heard the learned counsel for the parties.

2 This Application is preferred by the claimants for withdrawal of the further amount of USD 703,116/- on humanitarian grounds. The respondent original appellant filed their Affidavit-in-Reply dated 11.7.2014. Same is taken on record.

3 In the present proceeding, the Commissioner for Employees' Compensation and Judge, 6th Labour Court, Mumbai passed judgment and award dated 18.10.2013 directing the appellant Air

India Charters Ltd. to deposit in court USD 745580/- i.e. INR 46637797/- together with 50% penalty of the amount of compensation and 12% interest per annum on aforesaid amount. That order was challenged by the appellant by way of First Appeal No.1854 of 2013. The said appeal was admitted by this court. In that appeal, the appellants preferred Civil Application No.4764 of 2013 for staying the operation and implementation of the impugned judgment and award passed by Commissioner for Employees' Compensation and Judge, 6th Labour Court, Mumbai. This court (Coram: Mrs.Mridula Bhatkar, J.) by order dated 16/19th December, 2013 allowed the applicant to withdraw sum of Rs.2,76,89,723/- which was not disputed by the appellant. Thereafter, this court passed order on 8.1.2014 to continue the interim orders till the hearing and final disposal of the First Appeal.

4 The learned counsel for the applicant submits that the applicant received email dated 9.6.2014 stating that because of natural calamities that it is necessary for the applicant to make this application for withdrawal of the further amount. The said email reads thus:

“Sorry for this e-mail. We know you are doing your best for us, but we do not know if you are aware of the big floods in Serbia. The floods were so bad that the government itself requested for international help. This has never happened in our history and I am sure you can do something to help us. Please tell the judge about the floods and how we needed to get our life back. Ever since May 2010, our life has

only been on the slope down.

We know you did your best to get us some relief before Christmas and it was kind of you to have kept the Christmas in mind. It really helped us to return some of the money our friends and family gave us during our difficult times. Even now I need to pay for my pilot school and then need to find a job to help the family. Air India promised me the job my father was doing, but I have now lost hope on it. So please get us some immediate help to get out from this crisis.”

5 The learned counsel for the applicant submits that the Tribunal directed the appellant to pay 50% penalty of the amount of compensation as well as 12% interest per annum on amount of compensation. He submits that the amount which was withdrawn by them Rs.2,76,89,723/- was without any interest and or penalty. Hence, this Honourable court be pleased to allow the applicant to withdraw at least 25% penalty amount as well as 12% interest on the said amount. He submits that the appellant agreed and paid 25% penalty in respect of other claim petitions which was disposed of by filing consent terms. On the basis of these submissions the learned counsel for the applicant submits that this honourable court be pleased to allow the applicant to withdraw the amount as claimed by them in the present Civil Application.

6 On the other hand, the learned counsel for the appellant

vehemently opposed the present Civil Application. He submits that this court by order dated 16/19th December, 2013 allowed the applicant to withdraw undisputed amount of 2,76,89,723/-. He further submits that the appellants are disputing the remaining amount awarded by the Commissioner for Employees' Compensation & Judge. He submits that the main dispute is about the basic salary and the amount which they are liable to pay. He submits that in the present proceeding as per the contention of the appellant the deceased was drawing salary of USD 9170 whereas as per the contention of the claimants he was drawing USD 11,000 per month.

7 The learned counsel for the appellant further submits that if any amount is withdrawn by the claimant, it will be very difficult for them to recover the same in case they succeed in the First Appeal, because all the claimants are residing out of India. If this court allows them to withdraw some amount they must provide bank guarantee of any nationalised bank so that their claim can be secured.

8 Considering the submissions made by the learned counsel for the applicant and the averments made in Civil Application and after going through the email dated 9.6.2014, I am of the opinion that the applicant can withdraw remaining amount deposited by the appellant in the office of the Commissioner for Employees' Compensation and Judge, by providing bank guarantee of any nationalised bank. Hence, following order:

a) Applicant is permitted to withdraw the remaining amount deposited by the appellant in the office of the Commissioner for Employees' Compensation by providing bank guarantee of any nationalised bank within eight weeks from today with an undertaking that bank guarantee to remain in force till the hearing and final disposal of the First Appeal.

b) Civil application stands disposed off accordingly.

(K.K.TATED, J.)