

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL APPLICATION (CAF) NO. 514 OF 2015

IN

FIRST APPEAL NO. 478 OF 2014

(HUKUMCHAND BABULAL SETHI..VS..THE CHIEF GENERAL MANAGER, WCL, NAGPUR & OTH.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. P.A.Abhyankar, Advocate for Appellant.
Mr. C.S.Samudra, Advocate for Respondent No.1.
Mr. C.N.Deshpande, Advocate for Respondent No.4.

CORAM : Z.A.HAQ, J.

DATED : MARCH 04, 2015.

This is an application filed by respondent No.4 seeking modification of the order passed by this Court on 13th January, 2015 and praying for modification of the condition imposed by this Court for withdrawal of the amount.

2. By the order dated 13th January, 2015 respondent No.4 is permitted to withdraw the amount deposited by respondent No.1 on furnishing bank guarantee and solvent surety to the satisfaction of the Registrar (Judicial) of this Court. The respondent No.4 has prayed that the condition, requiring him to furnish bank guarantee, be relaxed. Respondent No.4 has filed affidavit stating that he owns a house at Mouza : Bhanegaon (details are given in paragraph 2 of the affidavit dated 2nd March, 2015) and another house at Mouza : Bhanegaon (details are given in paragraph 1 of the affidavit dated 2nd March, 2015). Respondent No.4 has stated that the house at Bhenegaon, referred in paragraph 1 of the affidavit, is jointly owned by him with his deceased brother Dhanraj Kisanji Randive.

3. Shri Abhyankar, learned advocate for the appellant, has submitted that the respondent No.4 intends to spend the amount, which he will be withdrawing, for the marriage of his daughter and once the amount is spent it would not be possible to recover the same. It is submitted that the respondent No.4 should not be permitted to withdraw the amount.

4. By the order dated 13th January, 2015, the respondent No.4 has been permitted to withdraw the amount after hearing all the concerned advocates. This Court is not concerned as to whether the respondent No.4 spends the amount or keeps it with him. Moreover, I find that the conduct of respondent No.4 is fair and it is apparent on record. The respondent No.4 of his own volition has stated that he intends to spend the amount for marriage of his daughter. The respondent No.4 has given details of two house properties owned by him.

5. Considering the facts, in my view, the order passed on 13th January, 2015 insofar as it imposes condition on respondent No.4 to furnish bank guarantee is required to be modified.

6. The respondent No.4 is permitted to withdraw the amount deposited by respondent No.1 on furnishing solvent surety to the satisfaction of the Registrar (Judicial) of this Court in respect of the house property, details of which are given in paragraph No.2 of the affidavit dated 2nd March, 2015 filed by respondent No.4. The respondent No.4 shall furnish solvent surety in respect of the house property (to the

extent of his share) shown in paragraph No.1 of the affidavit dated 2nd March, 2015. In addition, respondent No.4 shall file an undertaking stating that he shall not create any third party right or interest in the two house properties (to the extent of his share) and shall not part with the possession of the two house properties (to the extent of his share).

The amount shall be given to respondent No.4 after he complies with the above directions.

The Civil Application is allowed in the above terms.

JUDGE

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