

IN THE HIGH COURT OF BOMBAY AT GOA

MISC.CIVIL APPLICATION NO. 511 OF 2016

IN

FIRST APPEAL NO. 270 OF 2007

M/S. DELCON ENGINEERING, THR.
CONST. ATT. BY M.D. SHAFEEQ
MOHAMMED.

... Applicant

Versus

STATE OF GOA REP. BY CHIEF
SECRETARY AND ANR.

... Respondent

Mr. Deep D. Shirodkar, Advocate for the applicant.
Mr. P. Dangui, Addl. Government Advocate for the respondents.

Coram:- F. M. REIS, J.

Date:- 1st July, 2016

P.C.

Heard Mr. D. Shirodkar, learned counsel appearing for the applicant and Mr. P. Dangui, learned Addl. Government Advocate appearing for the respondents.

2. This is an application to permit the applicant to withdraw a sum of Rs.10,33,393/- which came to be deposited in this Court in First Appeal No.270 of 2007. The learned counsel appearing for the applicant has pointed out that as far as the part of the decree passed by the learned Trial Judge which has been quashed and set aside by judgment dated 15.12.2012, the matter is under consideration before the learned Lower Appellate Court. It is further pointed out that as far

as the amount payable to the applicant towards part of the decree which has attained finality, the applicant has filed an application for execution before the learned Trial Judge. The learned counsel has further pointed out that in the Execution Proceedings the respondents have filed their reply inter-alia disputing the claim put forward by the applicant but however, categorically admitting in the reply dated 28.03.2016 that the said sum of Rs.10,33,393/- was due and payable to the applicant in terms of the part of the decree under execution. It is also brought to my notice that an application for withdrawal of such amount came to be filed before the Executing Court which was not objected by the respondents, but however, it was found that no amount was deposited before the Executing Court as the amount was already deposited before this Court in the said First Appeal.

3. The learned Addl. Government Advocate appearing for the respondents seeks time to file a reply on the above application. But however, the undisputed fact as pointed out herein above suggest that as far as Rs.10,33,393/- is concerned, the respondents have no objection for such withdrawal. The learned counsel appearing for the applicant has also brought to my notice that the applicant is a Cancer patient and is in need of the funds for his medical attention.

4. In such circumstances, I find it appropriate and in the interest of justice to permit the applicant to withdraw the said amount of Rs.10,33,393/- from the Registry of this Court. Needless to say that

the amount so recovered shall be subject to any further orders if at all passed by the Executing Court on the correctness of such amount.

5. The application stands disposed of accordingly.

F. M. REIS, J.

at*