

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

CIVIL APPLICATION NO.1378/2016

IN

WRIT PETITION NO.4895/2015

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. Raj Patel with Viloma Shah with Juhi Bahirwani i/b. Hariani & Co. for the applicant
Mr. Nirav Shah with Anuj Jaiswal i/b. Little & Co. for the petitioner

CORAM : K. K. TATED, J.

DATE : AUGUST 25, 2016

P.C.:

1. Heard. This application is for withdrawal of the amount of Rs. 1,47,67,588/- deposited by the petitioner pursuant to the order dated 26.05.2015 passed by this court in Writ Petition No.4895/2015.

2. By order dated 18.08.2016, this court specifically directed the applicant to file an affidavit cum undertaking for withdrawal of the amount.

3. The affidavit is filed by one Mr. Arun Kumar Jhawar, Senior Vice President of respondent No.1 on the basis of Power of Attorney dated 15.03.2016. The learned counsel for the applicant

relies on clause 3 and 7 of the said Power of Attorney, in support of his contention that the deponent has power on behalf of the company to give an undertaking. Those clauses read thus:

“3. To sign, execute, affirm, endorse, admit or accept and file all or any complaints, memorandum of appeals, written statements, applications, petitions, declarations, affidavits, rejoinder, statements, representations, references, letters of authority, warrants of attorney, vakalatnamas and all other papers and documents that may be required or necessary.

7. To deposit, withdraw, receive or pay any money in any court of law in respect of any legal action or proceedings and also to certify payments and give valid discharge.”

4. Bare reading of clauses 3 and 7 show that the deponent has no power to give any undertaking on behalf of respondent No.1 i.e. Century Rayon. Hence, this affidavit-cum-undertaking cannot be accepted. Same is not as per the order passed by this court dated 18.08.2016.

5. Considering the submissions made by the learned counsel for the Applicant and the averments made in the Application, I am satisfied that the Applicant has made out a case for allowing the Civil Application. At the same time, we have to see to protect the interest of the petitioner in case

they succeed in the Writ Petition No.4895/2015, they must get their amount along with interest according to law.

6. Hence, the following order:

a. The applicant is permitted to withdraw Rs. 1,47,67,588/- along with accrued interest, if any, by furnishing bank guarantee of any Nationalized Bank to the satisfaction of the Registry of this court within four weeks from today.

b. If the applicant fails to withdraw the said amount within four weeks from the date of copy of this order, the Registry shall invest the said amount in a fixed deposit account of any Nationalized Bank, initially for a period of one year and same shall be renewed until further orders.

c. It is made clear that in case the petitioner succeeds in the Writ Petition, the applicant shall refund the amount along with interest to be decided by the court at that time.

d. Civil application stands disposed off accordingly.

JUDGE