

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

**CIVIL APPLICATION NO. 46 OF 2016
IN
ARBITRATION APPEAL NO. 3 OF 2016**

Hari Prasad Mohanlal Soni ... Applicant

In the matter between

Malegaon Municipal Corporation ... Appellant

vs.

Hari Prasad Mohanlal Soni ... Respondent

Mr. R. D. Soni a/w Ms. S. V. Sonawane, Advocate for the
applicant/ori. respondent.

Mr. Rahul S. Kate a/w Ms. Priyanka Joshi, Advocate for the
respondent/ori. appellant.

Coram : Smt. R. P. SondurBaldota, J.

Date : 23rd September, 2016

P.C. :

This Civil Application is taken out by the respondent to the arbitration appeal for liberty to withdraw the amount of Rs.48,80,933/- deposited by the appellant in this Court pursuant to the directions of the Court. Mr. Soni, the learned advocate for the applicant/ori.respondent submits that in view of the concurrent findings of the Tribunal and the District Court there should be no difficulty in permitting the applicant/ori.

Respondent to withdraw the amount deposited which is held to be due to him. He also points out that out of the sum deposited of Rs.48,60,933/- an amount of Rs.40,00,000/- is the security deposit paid by the applicant to the respondent/ori. appellant at the time of the contract. Mr. Kate, the learned advocate for the respondent/ori. appellant requests on the other hand that the withdrawal if permitted should be subject to furnishing of either bank guarantee or some other security in order to ensure that in the event the appellant succeeds in the appeal the amount can be recovered.

2. Considering the fact that, the substantial portion of the amount deposited is security deposit paid by the applicant, in my opinion, the applicant can be permitted to withdraw the amount on filing of an undertaking in writing that the applicant will bring back the amount in the event the appellant succeeds in the appeal. The applicant/ori. respondent to file undertaking in writing to that effect in the trial Court. On such undertaking being filed the applicant is at liberty to withdraw the amount deposited by the appellant. The undertaking to be The civil application is accordingly disposed off.

[Smt. R. P. SondurBaldota, J.]