

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO.14060 OF 2016

Creative Eye Limited ... Petitioner  
Vs.  
The File Writers Association and another ... Respondents

Mr. Sanskar Marathe i/b. H & M Legal Associates for Petitioner.  
Ms Saveena T. Bedi for Respondent No.1.  
Mr. S. S. Kudalkar for Respondent No.2.

**CORAM : R. G. KETKAR, J.**  
**DATE : DECEMBER 21, 2016**

**P.C. :**

Heard Mr. Marathe, learned Counsel for petitioner, Ms Bedi, learned Counsel for respondent No.1 and Mr. Kudalkar, learned Counsel for respondent No.2 at length. Rule. Learned Counsel for respective respondents waive service. In view of the narrow controversy raised in this Petition as also at the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

2. By this Petition under Article 227 of the Constitution of India, petitioner, hereinafter referred to as 'plaintiff', has challenged the judgment and order dated 11.11.2016 passed by the learned Judge, City Civil & Sessions Court, Greater Mumbai below exhibit-10 in S.C.Suit No.2653 of 2012. By that order, the learned trial Judge allowed the application made by the respondent No.1, hereinafter referred to as 'defendant No.1' for withdrawal of the amount deposited by the plaintiff in the Court.

3. Plaintiff had initially instituted Suit on the Original Side of this Court. During the pendency of that Suit, plaintiff took out Notice of

Motion. By order dated 15.07.2009, this Court directed the plaintiff to deposit 25% of the amount as directed in the order dated 20.04.2009 passed by the Dispute Settlement Committee (for short 'Committee') within three weeks from the date of the order. Plaintiff was also directed to file an appeal against the order dated 20.04.2009 passed by the Committee within three weeks from the date of the order. Accordingly, plaintiff deposited 25% of the amount in this Court as also preferred appeal before the appellate forum. By order dated 18.12.2009, the appellate forum has confirmed the order of the Committee. Plaintiff has amended the plaint so as to raise challenge to the decision of the appellate forum dated 18.12.2009.

4. During the pendency of the Suit in view of the enhancement of the pecuniary jurisdiction, Suit is transferred to the City Civil Court. Defendant No.1 filed application exhibit-10 for withdrawal of the amount deposited by the plaintiff. By the impugned order, the learned trial Judge has allowed the application and permitted defendant No.1 to withdraw the amount.

5. Learned Counsel for the parties advanced their respective submissions. Defendant No.1 has filed application on behalf of the defendant No.2 for withdrawal of the amount. Mr. Kudalkar, upon taking instructions from defendant No.2, who is present in the Court, states that defendant No.2 will furnish Bank Guarantee of the Nationalized Bank before withdrawing the amount as per the impugned order. He further assures that the said Bank Guarantee will be kept alive / renewed during the pendency of the Suit. He has tendered photocopy of the Aadhar Card of defendant No.2, which is taken on record and marked 'X' for identification.

6. In view thereof, the impugned order dated 11.11.2016 is modified in the following terms:

- a. Defendant No.1 is permitted to withdraw the amount deposited by the plaintiff on behalf of the defendant No.2. Before withdrawing the amount, defendant No.2 shall furnish Bank Guarantee of a Nationalized Bank of equal amount. Bank Guarantee shall be kept alive / renewed during the pendency of the Suit;
- b. Rule is partly made absolute with no order as to costs.

**(R. G. KETKAR, J.)**

*Minal Parab*