

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CIVIL APPLICATION NO. 16029 OF 2016
IN SA/92/2016

SHASHIKANT NARAYANRAO KULKARNI
VERSUS
HARIBHAU RAMDEORAO PATHAK

...
Advocate for Applicant : Shri Deshpande Amit S..
Advocate for Respondent : Shri H. K. Ashtekar.
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 15th September, 2017

Per Court:

1 The Applicant/ original Plaintiff / Respondent in the Second Appeal, prays for withdrawal of an amount of Rs.3 lac as has been deposited by the Appellant in the pending Second Appeal under the order of this Court dated 20.10.2016.

2 Shri Ashtekar, learned Advocate for the Respondent/original Appellant, submits that the suit filed by the Applicant was rejected by the judgment of the Trial Court dated 15.09.2012. The Applicant has succeeded in the first appeal proceedings. The proceedings initiated by the Applicant with regard to the dishonouring of a cheque under Section 138 of the Negotiable Instruments Act have also been rejected. If the Applicant withdraws the amount, it would be difficult to recover the same if the

original Appellant in the Second Appeal succeeds.

3 The Applicant/ Plaintiff seeking withdrawal of the amount, has succeeded before the first Appellate Court which has directed the Defendant to pay an amount of Rs.5 lac with 8% interest from the date of the suit which was filed in 2004. Rs.3 lac have been deposited. The ends of justice would be met if the Applicant/ Plaintiff is permitted to withdraw Rs.1,50,000/- on the condition of filing an affidavit-cum-undertaking and a solvent surety of the amount to be withdrawn, to the satisfaction of the Registry.

4 Considering the above, this Civil Application is allowed on the following conditions:-

- (a) The Applicant may withdraw an amount of Rs.1,50,000/- (Rupees One Lac Fifty Thousand) by filing an application along with the affidavit-cum-undertaking of the usual nature.
- (b) The Applicant shall tender a solvent surety for the amount to be withdrawn, to the satisfaction of the Registrar (Judicial) of this Court.
- (c) While making an application as stated in clause (a) above, the Applicant shall place on record his recent photograph and photocopies of his Voters Identity Card issued by the Election Commission of India, Adhaar/ PAN Card and the present residential address proof.

- (d) The withdrawal of this amount shall be subject to the result in the pending Second Appeal.
- (e) This order shall not come in the way of the Applicant, if he moves another application for withdrawal of the residual amount on the changed circumstances.

kps

(RAVINDRA V. GHUGE, J.)