

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

Civil Application (F) No. 486/2017

In

First Appeal No. 331/2011

with

Second Appeal No. 464/2016

(Vidyanand S/o Balkrushna Ogale Vs. Nilkanth S/o Baliram Sawarkar.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri A. Khare, Advocate for applicant.
Shri P.P. Kothari, for the non-applicant

CORAM : V.M. DESHPANDE, J.

DATED : NOVEMBER 20, 2017

This application is for withdrawal of the fixed deposit receipt worth Rs. 08,07,760/- deposited by the appellant/applicant by way of security.

Vide order dated 23rd February, 2017, this Court (Coram: A.S. Chandurkar, J.) ordered that this application be placed along with Second Appeal No. 464/2016. Therefore, this application is placed before this Court.

Heard Shri A. Khare, learned counsel for the applicant and Shri P.P. Kothari, learned counsel for the non-applicant. The non-applicant is the original plaintiff. He filed a suit for damage for malicious prosecution against the present applicant. In the said

suit, Vidyanand S/o Balkrushna Ogale also filed a counter claim for possession. The said suit was decided by the Court below whereby though the counter claim filed by the Vidyanand S/o Balkrushna Ogale, was dismissed, the decree was granted in favour of the Nilkanth S/o Baliram Sawarkar and thereby damages to the extent of Rs. 03,52,000/- along with interest were granted in his favour. That resulted in filing of appeal by the Vidyanand S/o Balkrushna Ogale before this Court. The said appeal was registered as First Appeal No. 331/2011. In the said appeal, the decree granting damages was challenged.

During the pendency of the said First Appeal, this Court vide order dated 28.06.2011 (Coram : A.B. Chaudhary, J.) granted stay in favour of Vidyanand S/o Balkrushna Ogale on a condition that he shall furnish security to the satisfaction of the Registrar (Judicial) of this Court. Consequently, he had deposited by way of Fixed Deposit Receipt to the tune of Rs. 08,7,760/- with the Registrar (Judicial). It is to be mentioned that appeal was filed by Vidyanand S/o Balkrushna Ogale, original defendant questioning the dismissal of counter claim. However, said appeal was dismissed as it has attained finality.

In the meanwhile, due to change in pecuniary jurisdiction, First Appeal No. 331/2011 was transferred to the file of District Judge-7, Nagpur. The said was then registered as Regular Civil Appeal No.

424/2012. The learned First Appellate Court vide judgment dated 27th June, 2016 allowed the appeal filed on behalf of Vidyanand S/o Balkrushna Ogale and thereby, set aside the decree granting damages in favour of the Nilkanth S/o Baliram Sawarkar.

In so far as the return of security is concerned, it is the submission of the learned counsel for the applicant that since the said order was passed by this Court, the learned Appellate Court did not pass any order, resulting into the present application for withdrawal of fixed deposit amount is filed before this Court.

According to Shri Khare, learned counsel for the applicant presently there is no order in favour of the non-applicant who is the appellant in Second Appeal No. 464/2016. Secondly, he submits that he is in dire need of money since his wife suffers from terminal disease (carcinoma).

Shri P.P. Kothari, learned counsel for the non-applicant submits that since the Second Appeal is admitted, it would be proper that the amount be kept here only. He submits that if the amount is ordered to be returned on ground of health of the present applicant, he has no objection.

It is to be noted that the appeal filed by the present applicant/original defendant by the learned Appellate Court though is admitted by this Court as on today, there is no order in his favour. The amount of

Rs. 08,07,760/- is in view of the order dated 28.06.2011 by way of security deposit which belongs to the present applicant and there is no dispute to the same. Consequently, the wife of the present applicant is also suffering from terminal disease which requires huge amount for medication.

In that view, I see no reason to disallow the prayer made by the present applicant for withdrawal of the amount.

Consequently, the applicant is permitted to withdraw the fixed deposit receipt amount of Rs. 08,07,760/- along with accrued interest thereon.

Application is disposed of.

JUDGE