

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

CIVIL APPLICATION (CAF) NO.1637 OF 2016

IN

FIRST APPEAL NO.47 OF 2015

M/s Dashmesh Road Construction Co. Pvt. Ltd. Swedbindu, Shanti Nagar,
Bhusawal, Dist. Jalgaon and anr.

-vs-

Gurugovindsingh Construction Co. Pvt. Ltd. Khamgaon and ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri Rajendra Raghuvanshi, Advocate with Shri
N.N. Singh, Advocate h/f Shri B. N. Jaipurkar,
Advocate for appellant.
Shri J. B. Gandhi, Advocate for respondent Nos.1
& 2/applicants.

CORAM : A.S.CHANDURKAR, J.

DATE : February 14, 2017

The present application has been moved by the original plaintiffs seeking permission to withdraw the amounts deposited by the appellants as a condition for staying the execution of the money decree passed against them.

The applicants are the original plaintiffs who have filed suit for recovery of outstanding amounts along with damages. It is the case of the plaintiffs that pursuant to Memorandum of Understanding dated 21/05/2007 they were entitled to recover the aforesaid amounts from the defendants. According to the defendants the claim as made was disputed and Annexure-I to the aforesaid Memorandum of Understanding did not saddle any liability on the defendants. The

trial Court has partly decreed the suit for an amount of Rs.89,62,200/-.

It is submitted by the learned counsel for the applicants that considering the findings recorded by the trial Court in paragraphs 57 to 61 a case for granting permission to withdraw the amounts deposited has been made out. Reference is also made to the terms mentioned in the Memorandum of Understanding dated 21/05/2007.

The application is opposed by the learned counsel for the appellants. Reference is made to the order dated 30/03/2015 wherein this Court had considered the aforesaid Memorandum of Understanding along with its annexures. It is then submitted that if the applicants are permitted to withdraw any amount, prejudice would be caused to the appellants as the entire liability has been disputed and it would not be possible to recover said amount if the appeal is allowed.

Having perused the impugned judgment along with Memorandum of Understanding and having gone through the order dated 30/03/2015, prima facie in view of findings recorded in paragraphs 57 to 61 of the impugned judgment, the applicants can be permitted to withdraw an amount of Rs.25,00,000/- subject to furnishing solvent surety to the satisfaction of the Registrar (Judicial). The applicants shall also file an undertaking that in case the appeal is allowed, the said amount shall be repaid with interest at such rate the Court may direct. The remaining amount shall remain invested in Fixed Deposit. This permission is granted without prejudice to the rights and contentions of the parties.

Application is allowed and disposed of.

JUDGE