

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

**917 CIVIL APPLICATION NO. 8733 OF 2018
IN FA/296/2018**

**RUKHIYABEE MAJAHIDKHAN AND ORS
VERSUS
GANESH SHRIRAM RATHOD AND ANR**

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Advocate for Applicants : Mr. Pramod C. Mayure
Advocate for Respondent No.1 : Mr. A.G. Dalal
Advocate for Respondent No.2 : Mr. S.D. Patil.

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CORAM : V.L. ACHLIYA, J.

DATED : 02nd AUGUST, 2018

PER COURT:-

1. The applicants have moved this application seeking permission withdraw the amount of Rs. 3.25 Lakhs deposited by the respondent no.1 i.e. appellant. towards satisfaction of the award passed by the Tribunal.

2. Heard the learned counsel for the applicants and counsel representing the respondents. Perused the impugned award passed by the Tribunal.

3. Learned counsel for the respondent no.1 – appellant opposed the application with the contention that the appellant has good case to succeed in appeal. It is submitted that the notice of claim petition was never served upon the appellant

Ganesh Shriram Rathod. It is submitted that as per the bailiff report, the notice was served upon the respondent no.1 – appellant. He further submits that on the basis of endorsement recorded by the postman on the notice sent through R.P.A.D. that, “the claimant has refuse to accept the notice”, the Trial Court has proceeded ex-parte against the respondent no.2. In this background, the learned counsel submits that the appellant has good case to set aside the award for want of notice and in the event, the application is allowed, it will be difficult to recover the amount. He further submits that the petition filed by the applicant also bad in in law for non joinder of necessary parties.

5. Upon considering the submissions advanced in the light of Record and Proceedings of the Trial Court, *prima facie* it reflects that the notice sent at the address of the respondent no.1 i.e. Ganesh Shriram Rathod returned to the Court with endorsement, which leads to passing of ex-parte order against respondent no.1. There is no dispute that another respondent namely; Ankit Sahebrao Patil has received the notice. There is no dispute as to fact that there was no report from the bailiff showing the service of notice. Considering the overall facts of the case and submissions advanced, I am of the view that passing of following order would meet the ends of justice :-

ORDER

[i] Subject to outcome of the appeal, the applicants are permitted to withdraw the amount of Rs.1 Lakh out of the amount deposited by the appellant on their furnishing undertakings to the satisfaction of the Registrar (Judicial) to the effect that in the event the award is set aside or modified and they are required to re-deposit the amount, they shall deposit the said amount within eight weeks from the date of such order.

[ii] The amount allowed to be paid to applicant no.1 i.e. mother of applicants no.2 to 5, the minor children of the deceased by transferring the amount in her savings bank account by way of electronic transfer i.e. RTGS /NEFT on furnishing the details of account.

[iii] The balance amount be invested in a fixed deposit initially for a period of eighteen months with State Bank of India, High Court Branch, Aurangabad, subject to renewal till the disposal of the appeal or further orders from this Court, whichever is earlier.

[iv] Interest accrued over the amount invested in fixed deposit be paid to the applicant no. 1 after every three months by transferring the amount of interest in her savings bank account to be utilized for the her own maintenance as well as maintenance of the minor children – applicant nos.2 to 5 and the applicant nos. 6 and 7.

[iv] The application is disposed of in the aforesaid terms.

(V.L. ACHLIYA)
JUDGE

SPR