

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO. 2604 OF 2018
IN
FIRST APPEAL NO. 1633 OF 2016**

Beatriz Abilio Nunes ... Applicant

In the Matter

ICICI Lombard General Insurance Co. Ltd. ... Appellant

Versus

Beatriz Abilio Nunes and others ... Respondents

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Ms. Seema Chopda for Applicant.

Mrs. Deepika i/b Res Juris for Respondent-original appellant.

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CORAM : K. K. SONAWANE, J.

DATE : 24th JULY, 2018.

P. C.:

1. Heard learned Counsel for the applicant-original claimant and the learned Counsel for the respondent-insurance company. No one else appeared on behalf of rest of the respondents. The record of the First Appeal No. 1633 of 2016 demonstrates that the present appeal came to be admitted by this Court under order dated 1st October, 2016 and it was directed to the appellant-insurance company to file private paper-book within a period of six months. Moreover, there was a condition imposed on the appellant-insurance company that on failure to file private paper-

book within stipulated period, the appeal stand dismissed automatically.

2. It is seen from the documents that the appellant-insurance company did not take any steps to produce private paper-book within stipulated period, therefore the First Appeal filed on behalf of the insurance-company came to be dismissed for non compliance of the directions issued by this Court under order dated 1st October, 2016. Therefore, the proceedings of the First Appeal stands disposed of.

3. In such circumstances, there is no impediment to allow the applicant-original claimant to withdraw rest of the balance decretal amount deposited in the M.A.C.T. Dadara and Nagar Haveli, Silvassa. It is not in dispute that the applicant-claimant has already withdrawn 50% of the decretal amount with the permission of this Court. The applicant-claimant is further permitted to withdraw rest of the decretal amount as the First Appeal filed on behalf of the company has already been disposed of for non compliance of the order passed by this Court. Hence, civil application stands allowed in terms of prayer clause (a).

4. The applicant-claimant is hereby permitted to withdraw rest of the balance amount with interest accrued thereon, deposited in the M.A.C.T. Dadara and Nagar Haveli, Silvassa in M.A.C.P. No. 29 of 2013, subject to condition that in case any contingency arises, the applicant shall refund the entire decretal amount so withdrawn in the present proceedings.

5. Accordingly, civil application stands disposed of in above terms.

(K. K. SONAWANE, J.)

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