

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

**CIVIL APPLICATION NO. 4213 OF 2017
IN
FIRST APPEAL NO. 505 OF 2017**

Mahendra J. Kara

.. Applicant
(Orig. Defendant)

Vs.

Mrs. Roda Hemant Kara & Anr.

.. Respondents
(Orig. Plaintiffs)

Mr.V. Mannadiar, Advocate I/b. Mannadiar & Co. for applicant.

None for respondents.

**CORAM : A.S. CHANDURKAR, J.
DATE : 21ST NOVEMBER 2018**

P.C.

CIVIL APPLICATION NO. 4213 OF 2017

1 By this application, it is prayed that the applicant be refunded an amount of Rs.45,40,396/- that are lying in deposit in this Court pursuant to earlier orders passed in Contempt Petition No.263 of 2016.

2 The present applicant is the original defendant in the suit for specific performance. The present applicant was required to deposit an amount of Rs.1 crore. The applicant, however, deposited an amount of Rs.40 Lakhs within the stipulated time but there was a default in depositing the amount of Rs.60 Lakhs. In Contempt Petition No.263 of 2016, the remaining amount of Rs.60 Lakhs was deposited on 12th September 2016. Thus, in

effect, an amount of Rs.1 crore has been deposited.

3 The suit filed by the original plaintiff was decreed on 29th August 2016 directing the present applicant to pay an amount of Rs.10,91,463/- with interest at the rate of 18% per annum.

4 The said decree has been challenged in First Appeal No.505 of 2017 and that appeal is pending. It is in these aforesaid facts that the applicant seeks permission to withdraw the balance amount of Rs.45,40,396/-. According to the applicant, the principal amount decreed along with interest @ 18% per annum as on 25th January 2017 comes to Rs.54,59,604/-.

5 There is no appearance on behalf of the respondents though the matter is called out twice.

From the aforesaid, it is seen that the interest of the decree-holder is secured in view of the decretal amount lying in deposit in terms of the earlier orders.

6 There is no reason whatsoever not to grant the prayer made in the application.

7 Considering the fact that the calculations in question have been

made till 25th January 2017, the applicant is permitted to withdraw the amount of Rs.40 lakhs. The Registrar, City Civil Court, Mumbai is directed to refund the amount of Rs.40 lakhs to the applicant along with the interest accrued on that amount. The same be done expeditiously.

8 The civil application is allowed in the aforesaid terms.

(A.S. CHANDURKAR, J.)