

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION (ST) NO.28942 OF 2017
IN
CIVIL APPLICATION (ST) NO.3974/2017
IN
FIRST APPEAL NO.816 OF 2016

Satish T Borade ... Applicant

V/s.

Indian Express Ltd. ... Appellant

Satish T. Borade & Ors. ... Respondents

Ms. Manjiri S. Parasnis for the Applicant

Mr. Amol Joshi with Sufiyan Shaikh i/b. Poorvi Kamani for the
Respondent

**CORAM: K.K. TATED &
B. P. COLABAWALLA, JJ.**

DATED : MARCH 23, 2018

P.C. :

1 This Application has been filed seeking a direction against the Appellant (original Defendant No.1) to deposit the entire decretal amount of Rs.75,31,633/- together with interest @ 12% p.a. from the date of the accident (29th June 2011) till payment and/or realization.

2 This matter was argued before us at some length on 16th March 2018 and thereafter judgment was reserved. The matter

was thereafter mentioned yesterday wherein the Appellant (original Defendant No.1) has agreed to deposit a sum of Rs.25 lakhs in this Court and has further agreed that the balance decretal amount shall be secured by furnishing a Bank Guarantee of any Nationalized Bank. The only request made is that the interest be calculated @ 12% p.a. from the date of decree rather than the date of the accident i.e. 29th June 2011. The original Defendant No.1 (Appellant) has also filed an affidavit dated 22nd March 2018 stating the aforesaid facts. Paragraph 3 of this affidavit reads as under:

3. I say that the Appellant company (Orig. Defendant No.1) is seeking an early hearing of its First Appeal. That in the meanwhile the Appellant Company (Orig. Defendant No.1) is ready and willing to deposit a sum of Rs.25,00,000/- (Rupees twenty five lakhs only). For the balance decretal amount as stated earlier the Appellant (Orig. Defendant No.1) is ready and willing to secure the same by way of a bank guarantee. I humbly pray in determining the balance amount for which bank guarantee is to be given, interest @ 12% p.a. may be permitted to be calculated from the date of the decree viz. 14.10.2015 and not from the date of the accident i.e. 29.06.2011."

3 The learned counsel for the Applicant herein (original Plaintiff) has fairly stated that the Applicant has no objection to this course of action being adopted, but prays that the Applicant be allowed to withdraw the amount of Rs.25 lakhs by furnishing a Bank Guarantee of any Nationalized Bank and undertakes to bring back this amount of Rs.25 lakhs together with interest at such rate as this Court may decide at the final hearing of appeal, should be Applicant (original

Plaintiff) lose in the Appeal or the impugned decree is set aside.

4 In view of the aforesaid consensus, the following order is passed:

- a. The execution of the impugned decree is stayed subject to the following conditions:
 - (i) The original Defendant No.1 (Appellant) is directed to deposit a sum of Rs.25 lakh in this Court within a period of four weeks from today.
 - (ii) The balance decretal amount shall be secured by way of a Bank Guarantee of any Nationalized Bank. This Bank Guarantee shall be deposited in this Court within a period of four weeks from today.
 - (iii) It is clarified that the Bank Guarantee shall be for the balance decretal amount together with interest @ 12% p.a. from the date of the decree i.e. 14th October 2015. This Bank Guarantee shall be kept alive till the hearing and final disposal of the Appeal.
 - (iv) On Defendant No.1 (Appellant) depositing a sum of Rs.25 lakhs in this Court, the original Plaintiff (Applicant) shall be entitled to withdraw the same subject to the original Plaintiff securing the said amount by giving a Bank Guarantee of any

Nationalized Bank.

- (v) The original Plaintiff further undertakes that in the event he fails in the Appeal, this amount shall be brought back together with interest at such rate as this Court may determine at the final hearing of the Appeal.
 - (vi) If there is default in the Appellant depositing sum of Rs.25 lakhs or any part thereof, or furnishing the Bank Guarantee, then the stay of the execution of the decree shall automatically stand vacated without further reference to the Court and the Plaintiff shall be entitled to execute the decree in accordance with law.
- b) It is made clear that all contentions of both the parties are kept open including the interest component.
- c) Liberty granted to the Appellant to mention this matter for expedited hearing once this order is complied with.
- 5 The Civil Application is disposed of in the aforesaid terms.

(B. P. COLABAWALLA, J.)

(K.K. TATED, J.)