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

CIVIL APPLICATION NO.2266 OF 2018
IN
IN WRIT PETITION (STAMP) NO.1737 OF 2018

Afroz Chilwan ..Applicant

IN THE MATTER OF :

M/s. Sona Enterprises ..Petitioner

Versus

VijayaPawankumar Pawar & Ors. ..Respondents

WITH

CIVIL APPLICATION NO.2173 OF 2018
IN
WRIT PETITION (STAMP) NO.1737 OF 2018

Nadim Mohammad Ali Chilwan and Anr. ..Applicant

Versus

M/s. Sona Enterprises
Through its Partners and Ors. ..Respondents

Mr.Yashodeep Deshmukh alongwith Mr.Vinod Sangvikar for the original
Petitioner.

Ms.Vidhi Thakar I/by Mr.Kuknal Bhanage for the Applicants in both the
Applications.

CORAM : REVATI MOHITE DERE, J.

DATED : 15th OCTOBER 2018

P.C.:

- 1] Civil Application No.2266 OF 2018 is not board, taken on board.
- 2] Heard learned counsel for the parties. Learned counsel for the applicant-Afroz Chilwan in Civil Application No.2266 of 2018 seeks permission to withdraw an amount of Rs.16,70,000/- out of Rs.25,50,000/- deposited by the Petitioner in this Court, pursuant to the order dated 29th January 2018.
- 3] Learned counsel for the Applicant-Afroz Chilwan has tendered an Affidavit of said Applicant i.e. the Respondent No.4 in the main Writ Petition i.e. of Afroz Mohammad Ali Chilwan. The said Affidavit is taken on record and marked 'X' for identification. The applicant Afroz Chilwan in para Nos.5 to 8 of the said Affidavit has stated as under :

5 *I say that, I am ready and willing to accept a sum of Rs.16,70,000/- (Rupees Sixteen Lakhs Seventy Thousand Only) as full and final settlement of my claim without prejudice to the merits of the Order that is impugned in the present Petition.*

6 *I say that, I hereby agree and give my consent for cancellation of the said Agreement for Sale. I hereby agree and state that I am electing to withdraw from the development project and shall not claim any right, title and/or interest in the said Flat.*

7 *I hereby undertake that my heirs, assigns, representatives or any person claiming through me shall not*

claim any right, title or interest of any nature whatsoever in the said flat which is the subject matter of the said Agreement for Sale.

8. I hereby further declare that I have not created third party rights in any manner whatsoever in the said Flat and that the Petitioner shall be at liberty to deal with any third party only in respect of the said Flat and handover possession thereof to such party and/or deal with the same in any manner whatsoever, as be deemed fit by them.

4] Learned counsel for the Applicant-Afroz Chilwan further states that the applicant will appear before the Authorities and get the Agreement for Sale cancelled within four weeks from today. Statement accepted. Learned Counsel for the Petitioner states that the Petitioner is ready to bear all the cancellation charges of the Agreement for Sale, on the Applicant-Afroz Chilwan signing the necessary documents.

5] The Applicant has filed the aforesaid Civil Application No.2266 of 2018 for withdrawal of Rs.16,70,000/-, as the Applicant has been diagnosed with Cancer and requires the money for treatment. Considering the fact, that the Applicant has agreed to settle the dispute with the Petitioner, for a full and final amount of Rs.16,70,000/- as the Applicant is in need of money, the Petitioner has also given their no objection on humanitarian grounds, for withdrawal of the said amount by the Applicant. Affidavit-cum-Undertaking given by the Applicant, which is taken on record is accepted.

6] Accordingly, Civil Application No.2266 OF 2018 is allowed. The Applicant-Aforz Chilwan is permitted to withdraw an amount of Rs.16,70,000/- out of the total amount of Rs.25,50,000/- deposited by the Petitioner in the Registry of this Court, pursuant to the order dated 29th January 2018. The Registry to forthwith release the said amount in favour of the Applicant-Afroz Chilwan, either by Demand Draft or by RTGS directly in the bank account of the Applicant, on furnishing proof of identity.

7] The Petitioner to deposit the shortfall as directed by this Court pursuant to the order dated 29th January 2018, to make up a total of Rs.25,50,000/- on or before 6th December 2018.

8] In view of the order passed in Civil Application No.2266 OF 2018, learned Counsel for the applicant does not press Civil Application No. 2173 of 2018 and seeks leave to withdraw the same.

9] Accordingly Civil Application No.2173 of 2018 stands disposed off as withdrawn.

All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)