

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

**CIVIL APPLICATION NO.2676 OF 2017
IN
WRIT PETITION NO.3620 OF 2005**

Surendra Pramod Gupta Applicant

In the matter between

Surendra Pramod Gupta Petitioner

Vs.

Hiralal Gautam & Anr. Respondents

Mr. T.R. Yadav for the Applicant.

Mr. Moinuddin Ahmed Khan for Respondent no.1.

Coram : SMT. SADHANA S. JADHAV, J.

Date : 7th September 2018.

P.C.:

1 Heard learned counsel for the parties. Rule. Rule made returnable forthwith with the consent of the parties.

2 The applicant herein has filed the present application to recall the order dated 31st October, 2017 passed in Civil Application No.2312 of 2017 passed by this Court (Coram : S.J Kathawalla J.)

and also to restore the order 21st July 2005 passed by this Court (Coram : Smt. Nishita Mhatre, J.). The order dated 21st July 2005 is reproduced hereunder :

“Rule.

2 Interim relief in terms of prayer clause (b) of the Writ Petition on condition that the petitioner deposits in this Court the entire decretal amount of Rs.3,33,500/- within four weeks from today. The amount, if deposited, shall be invested in a Fixed Deposit of a Nationalised Bank initially for a period of three years and to be renewed till the pendency of the Writ Petition.”

3 While dealing with the Civil Application seeking withdrawal of the amount, the Hon'ble Shri Justice Kathawalla had taken into consideration the order dated 13th January 2005. The petitioner herein was directed to deposit the decretal amount. It is pertinent to note that the petition had come up for final hearing and disposal on 12th June 2017. Hon'ble Smt. Justice Anuja Prabhudessai, had observed that there has been default on the part of the petitioner to prosecute the matter diligently and hence dismissed the petition for want of prosecution. The respondent had

filed an application seeking withdrawal of amount of Rs.3,33,500/-. The application was filed seeking restoration of the Writ Petition on 12th June 2017. However, on 31st October, 2017 circulation was sought and after the circulation was sought, the copy of the application was not served upon the present applicant i.e. the original respondent or their Advocate. Hon'ble Shri. Justice Kathawalla had opined that there is no plausible explanation for the for the same and directed the applicant to withdraw the amount with interest accrued thereon.

4 The petition is of the year 2005. On 21st July 2005, the present applicant was directed to deposit the decretal amount and it is invested in the nationalised bank as per the directions dated 21st July 2005. The petitioner / applicant herein has filed this application seeking the relief of recalling the said order. The said application was filed in November 2017. It is seen that the copy of the application was served on the respondent just two days before the scheduled date. The matter could not be heard due to paucity of time. By an order dated 19th March 2017, Hon'ble Shri. Justice A.K.

Menon had passed an order that the matter be listed before the same Court, which has passed the order. Thereafter Hon'ble Shri. Justice Kathawalla by an order dated 21st August 2018 has directed that the matter be placed before the regular Court and hence the matter is being heard by this Court.

5 The applicant seems to be a senior citizen and is aged about 57 years old. It is seen from the earlier records that the petitioner is not prosecuting the petition for final hearing diligently. According to the learned counsel for the applicant/petitioner, the respondent was never working with the petitioner and therefore is not entitled to withdraw the amount. These are disputed facts. In any case, it would be necessary to pass an appropriate order.

6 The respondent herein namely Hiralal Gautam is permitted to withdraw the amount, which is deposited in the nationalised bank within four weeks, subject to the decision of this Court in the original petition.

7 The applicant is granted liberty to withdraw the amount of Rs.3,33,500/- upon filing an indemnity bond and also two local solvent sureties to the subjective satisfaction of the Registrar of this Court.

8 The Registrar shall take appropriate steps to permit the respondent to withdraw the said amount. The Registry to take steps within six weeks

9 The application seeking recalling of the order dated 31st October, 2017 is rejected.

10 In the eventuality that the applicant succeeds in the Writ Petition, the respondent shall return the amount alongwith the interest accrued from the date of withdrawal of the said amount.

(SMT. SADHANA S. JADHAV, J.)

Note : Order is modified by an order of this Court dtd.27th September 2018.