

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CIVIL APPLICATION NO.3368 OF 2018
IN
CIVIL APPLICATION NO.187 OF 2018
IN
ARBITRATION APPEAL NO.1 OF 2018

M/S. ADITYA TELEVENTURES, THROUGH IT'S SOLE PROPRIETOR ANIL
NIRMALCHAND OSWAL
VERSUS
HUTCHISON ESSAR CELLULAR LIMITED AND ANOTHER

...
Advocate for the Applicant : Shri S.G.Ladda
Advocate for Respondent 1 : Shri S.G.Chapalgaonkar h/f Shri A.S.Gandhi
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 03rd October, 2019

Per Court:

1 Heard the learned advocates.

2 This Civil Application No.3368/2018 is filed by the original respondent no.1 in the Arbitration Appeal seeking withdrawal of the amount of Rs.2.15 crore that have been deposited in this court under the orders of this Court passed earlier in the appeal.

3 Though it has not been pleaded in the Civil Application, it is pointed out that a medical urgency has occurred after the civil application was filed on 12.02.2018. The compilation of documents (06 pages

inclusive of 05 original photographs) is tendered across the Bar to indicate that the son of the applicant (Harsh Anil Oswal) is suffering from "Right Foot Congenital Talipes Equinovarus (CTEV)". He is advised surgery on the right foot. His fingers are also deformed and he would require necessary medical assistance, which would involve about Rs.10 lac to Rs.12 lac of medical expenses, as per the report of the multi specialty hospital dated 30.09.2019.

4 The learned advocate for the appellant company has strenuously opposed this civil application. It is submitted that firstly, the medical grounds are not mentioned in the civil application, which was pending for almost 18 months. Though he expresses his concern as regards the health issues of the son of the applicant, he submits that eventually the applicant would not be entitled for a single rupee. If a large amount is permitted to be withdrawn, it would be cumbersome for the appellant company to recover the said amount from the applicant.

5 Considering the above and keeping in view that a young child of the applicant is suffering from congenital deformities and the medical experts find it appropriate to initiate the surgical procedure as he is of an age at which such surgeries can be performed, this Civil Application is allowed on the following conditions :-

- (a) The compilation of documents (six pages) is taken on record and marked as "X-1" for identification and shall be a part of

the record.

- (b) The applicant would be at liberty to withdraw an amount of Rs.12 lac from this Court.
- (c) While tendering an application for withdrawal, the applicant shall file an affidavit undertaking mentioning his private residential property details (situated at Aurangabad) and shall give an undertaking that he would not create third party interest or encumbrances on the said property without the leave of the court.
- (d) The affidavit undertaking would also indicate that if the arbitration appeal is decided against the applicant, he would deposit that portion of the amount to which he is held disentitled, in this court within six weeks from the date of such adverse order.
- (e) The applicant would make account payee cheque payments to the hospital in which the child (Harsh Anil Oswal) would undergo the surgical operations.
- (f) After the surgery is performed, such payments and medical receipts and certificates shall be tendered in this court in the Arbitration Appeal.
- (g) It is made clear that the traveling expenses either within India or abroad for the medical treatment or surgery of the child,

shall not be paid through the amount that is permitted to be withdrawn. The said amount shall purely be utilized for meeting the medical expenses and not traveling expenses.

- (h) If the child is not subjected to medical surgery/ treatment within four months, the amount shall be redeposited in this Court by the applicant within one week after the expiry of four months from today.

kps

(RAVINDRA V. GHUGE, J.)