

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

CIVIL APPLICATION NO.15022 OF 2017
IN
WRIT PETITION NO.3377 OF 2002

SYED YUSUF ALI SYED TILAWAT AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS.

WITH
CIVIL APPLICATION NO.11895 OF 2018
IN
WRIT PETITION NO.3377 OF 2002

CHANDU PRABHAKAR NAIDU S/O JANKIRAM NAIDU
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS.

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Shri Shaikh Shermahmed K., Advocate for the Applicant in
CA/15022/2017.

Shri D.R.Bhadekar, Advocate for the Applicant in CA/11895/2018.
Shri N.T.Bhagat, AGP for Respondents / State.

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**CORAM: RAVINDRA V. GHUGE
AND
SUNIL K. KOTWAL, JJ.**

DATE :- 18th January, 2019

Per Court :

1 We had issued notice to Respondent Nos.1, 18 and 19 by order dated 26.09.2018. We had recorded the contentions of the Applicant in the first application that the notices are not required to be issued to Respondent Nos.2 to 17 as they are unconcerned with the issue

of withdrawal of amount.

2 We have perused the paper publications placed on record which indicate compliance of our directions dated 26.09.2018 insofar as serving Respondent Nos.18 and 19 is concerned.

3 Shri Bhadekar, learned Advocate appears for Respondent No.18, who has filed the second Civil Application. Despite service of the notice through paper publication, no appearance has been entered by Respondent No.19.

4 The issue put forth is that this Court had directed the Petitioner (Syed Yusuf Ali s/o Syed Tilawat Ali) in Writ Petition No.3377/2002 to deposit an amount of Rs.3,14,000/-. The said amount is deposited in this court and the concerned Section of this Court issued the receipt dated 28.07.2003 bearing No.10225. The receipt was issued in the name of Syed Yusuf Ali as being the person, who had deposited the money in this Court. Syed Yusuf Ali passed away on 06.05.2004. His wife passed away on 15.08.2017.

5 The Applicants in the first civil application are the legal heirs of the deceased Syed Yusuf Ali and his deceased wife. Respondent No.18 (Chandu Naidu) in the first civil application has filed the second Civil Application No.11895/2018. A host of reasons are cited in the application to indicate that it was the said Applicant Chandu Naidu, who passed on the amount of Rs.3,14,000/- to late Syed Yusuf Ali for the purposes of

depositing the said amount in the Court.

6 Shri Bhadekar, learned Advocate appearing for the Applicant (Chandu Naidu) submits that though there is no record to the extent of these proceedings, Chandu Naidu had given the said amount to the said Syed Yusuf Ali out side the court so as to enable him to deposit the said amount in the Court and comply with the directions of this Court.

7 The learned Advocate appearing on behalf of the legal heirs of the deceased Syed Yusuf Ali denies the contentions of Chandu Naidu.

8 We find that in our writ jurisdiction, disputed issues cannot be gone into. This Court had directed the Petitioner (Syed Yusuf Ali) to deposit the amount in the court. The receipt issued on account of depositing of the amount indicates the name of Syed Yusuf Ali as being the person who has deposited the said amount.

9 As such, we do not find any reason to venture into deciding these disputed questions raised by both these applicants. We purely go by the receipt that was issued by the concerned Section of this Court which would indicate that the amount was deposited by Syed Yusuf Ali in this Court.

10 In the light of the above, the first Civil Application filed by the legal heirs of the deceased Syed Yusuf Ali is allowed and the second Civil Application filed by Chandu Naidu is rejected.

11 We find that an original General Power of Attorney executed

by Applicant No.2B (Syeda Abbasi Begum) and Applicant No.2C (Syeda Begum) in favour of Applicant No.1A (Syed Mustafa), is placed before us in original form. Shri Shaikh, learned Advocate appearing for the said Applicants, confirms that Applicant No.1A (Syed Mustafa) mentioned in the first civil application is the same Syed Mustafa s/o Shaida Banu in whose favour the General Power of Attorney has been executed. The said original General Power of Attorney (total 11 pages) executed on 13.12.2017 before the Notary, is taken on record and collectively marked as "X" for identification. By the said document, Applicant No.2B (Syeda Abbasi Begum) and Applicant No.2C (Syeda Begum) have waived their right to withdraw the said amount and Applicant No.1A (Syed Mustafa) is empowered to receive the entire amount.

12 Applicant No.1A (Syed Mustafa) is permitted to withdraw the amount of Rs.3,14,000/- (Rupees Three Lac Fourteen Thousand) along with the accrued interest, on the following conditions :-

- (a) An application seeking withdrawal shall be filed by Applicant No.1A under the identification of his Advocate appearing in this matter.
- (b) Along with the application seeking withdrawal of the amount, Applicant No.1A shall annex the photocopies of his Election Commission's Voters Identity Card, PAN Card issued by the Income Tax Department, his bank passbook maintained in the

Bank at Hyderabad, address proof and recent passport size photograph.

- (c) In the event of any dispute between Applicant Nos.1A, 1B and 1C, the said dispute would be a matter to be resolved between the parties.
- (d) It is left open for Chandu Naidu to take recourse to any such remedy as is permissible in law if he is aggrieved by the withdrawal of the amount by Applicant No.1A.

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(SUNIL K. KOTWAL, J.)

(RAVINDRA V. GHUGE, J.)