

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

WRIT PETITION NO.1685 OF 2019

**SUKESHINI VIJAYKUMAR DUGANE AND OTHERS
VERSUS
GOVIND S/O PUNDLIK RAKHE AND OTHERS**

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Advocate for the Petitioners : Shri N. S. Kadarale
Advocate for Respondent Nos. 5 and 6 : Shri A. R. Salve

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 16th SEPTEMBER, 2019.

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PER COURT :

1. The petitioners are the original plaintiffs in Regular Civil Suit No. 45/2014. They are aggrieved by the interlocutory order dated 30/10/2017 passed by the Appellate Court, by which, application Exhibit 5 filed by the respondents seeking a stay to the impugned judgment of the Trial Court, has been allowed in Regular Civil Appeal No. 38/2017. The condition of depositing Rs. 75,000/- is imposed for granting the said application. The petitioners are aggrieved by the condition that they would not be permitted to withdraw the said amount till the appeal is decided.

2. I have considered the strenuous submissions of the learned Advocates for the respective sides. Respondent No.1 has not entered an appearance despite being served with court notice.

3. I find from the record that the Appellate Court has directed the respondent Appellants to deposit Rs. 75,000/- in the Court since that amount is towards the compensation to be paid to the original plaintiffs on account of the death of Vijaykumar who had suffered an electric shock. The contention of the respondents is that the deceased got electrocuted, not on account of the negligence of the respondents. A neighbouring farm owner had erected a barbed fencing and had introduced an electric current in the said fencing.

4. In the light of the above and keeping in view that the petitioners have succeeded before the Trial Court, ends of justice would be met by permitting them to withdraw the deposited amount under conditions and direct the Appellate Court to decide the Appeal expeditiously.

5. In view of the above, this petition is partly allowed. Clause No. 3 in the operative part of the impugned order dated 30/10/2017 shall stand modified as under :-

Clause 3 : The petitioner/original plaintiff (petitioner No. 1 widow of the deceased) is permitted to withdraw the amount of Rs. 75,000/- only, deposited before the learned District Judge – 1, Biloli by the respondents. While withdrawing the amount, she shall file an affidavit undertaking that if the judgment in the appeal is adverse to the petitioner, she would re-deposit the entire amount within eight weeks before the Appellate Court without interest. Failure to do so would attract interest @ 6 % p.a. after two months.

6. The appellants shall supply the appeal paper book before the Appellate Court, on or before 15/10/2019. The Appellate Court shall decide RCA No. 38/2017 as expeditiously as possible and in any case on or before 31/12/2019.

(RAVINDRA V. GHUGE, J.)

shp/-