

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

**CIVIL APPLICATION NO. 372 OF 2019
IN
CIVIL APPLICATION NO. 1515 OF 2019
IN
FIRST APPEAL NO. 980 OF 2017**

**Smt.Anantmati Jitendra Bharamgonda
& Ors.**

..... Applicants

IN THE MATTER BETWEEN

National Insurance Company Limited

..... Appellants

VERSUS

**Smt.Anantmati Jitendra Bharamgonda
& Ors.**

..... Respondents

Mr.Kedar P. Lad for the Applicants.

Mr.Harshad Rane for the Respondents.

CORAM : R.D. DHANUKA, J.

DATE : 28th NOVEMBER, 2019

P.C.

By this civil application, the applicants seek modification of the order dated 25th April,2019 passed by this court in Civil Application No.1515 of 2019 and seeks liberty to withdraw 50% of the amount deposited by the appellants without furnishing bank guarantee or any other security.

2. By an order dated 25th April,2019, this court had permitted the applicants to withdraw the entire amount on furnishing the bank guarantee and by filing an undertaking before the trial court that they

would continue the said bank guarantee during the hearing and final disposal of the first appeal.

3. Learned counsel for the applicants submits that it is not possible to furnish the bank guarantee as directed by this court for withdrawal of the entire amount. The applicants however be permitted to withdraw 50% of the amount deposited by the appellants without furnishing security.

4. Heard learned counsel for the applicants. Learned counsel for the appellants submits that since the civil application for withdrawal is filed only by the widow, this court shall not allow the withdrawal of the amount to the other applicants.

5. A perusal of the civil application filed by the applicants indicate that the application has been filed by all the applicants though has been verified only by the widow Smt. Anantmati Jitendra Bharamgonda. I am not inclined to accept the submission of the learned counsel for the appellants that the civil application has been filed only by the widow and not on behalf of the all applicants.

6. I am inclined to allow 50% of the amount considering the facts of this case in favour of all the applicants pro-rata to the extent of 50% of the amount deposited by the appellants on furnishing an undertaking before the M.A.C.T. to the effect that if the appellants succeed in the first appeal and if the applicants are directed to return the amount, they would return the amount with interest at such rate as this court may direct.

7. Such undertaking shall be filed within four weeks from today before the concerned M.A.C.T.

8. If the undertaking is not filed within the time prescribed, the concerned M.A.C.T. to invest the entire amount in a fixed deposit of a nationalized bank initially for a period of five year and thereafter for like period after obtaining further orders from this court.

9. If the undertaking is filed as prescribed, the Tribunal to permit the applicants to withdraw the 50% of the amount deposited in equal share to all the applicants. In that event the Tribunal shall invest the balance 50% of the amount in a fixed deposited of a nationalized bank in the manner prescribed aforesaid.

10. The parties as well as the concerned M.A.C.T. to act on the authenticated copy of this order.

11. Order dated 25th April,2019 passed by this court in Civil Application No.1515 of 2019 stands modified to this extent.

12. Civil application is disposed of on the aforesaid aforesaid terms. No order as to costs.

[R.D.DHANUKA, J.]