

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

**CIVIL APPLICATION NO. 1003 of 2016
IN
FIRST APPEAL NO. 79 OF 2016**

Savak Padamji Balsara ..Applicant

In the matter between

The Bombay Dyeing & Manufacturing
Co. Ltd. ..Appellant

v/s.

Savak Padamji Balsara ..Respondent

Mr. Vikrant Malihare vs/ Rujuta Patil for the Appellant
Mr. for the Respondent.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 27th SEPTEMBER, 2019.**

P.C.

CIVIL APPLICATION NO. 1003 OF 2016

1. The applicant herein has sought withdrawal of the decretal amount as per the judgment and decree dated 9.5.2015 passed by the learned Judge, City Civil Court, in Short Cause Suit No. 7578 of 1981.

2. By the impugned judgment and decree the learned Judge of the City Civil Court, Mumbai has partly decreed the suit filed by the applicant-original plaintiff and directed the respondent-appellant in the present appeal to pay to the applicant an amount of Rs.25,384/- with interest @ 9% per anum from the date of suit till realization. The records indicate that the applicant herein was an employee of the appellant. He had submitted his resignation. The applicant had claimed that he was entitled to receive Rs.33,400/- towards gratuity, Rs.33,388/- as salary towards encashment of leave and Rs.18,102/- towards severance pay. The Civil Court has held that the applicant is entitled for total sum of Rs.25,384/-.

3. The respondent does not dispute that the applicant is entitled to receive the said amount towards gratuity, encashment leave. The only defence raised was that it was entitled to withheld the claim till the applicant executed re-conveyance in respect of the flat sold to him. A separate suit in respect of the re-conveyance of the said flat has been dismissed. The learned Judge has therefore held that the appellant is not entitled to withhold the said dues. The learned Counsel for the appellant states that the judgment in the connected suit relating to

executing of the re-conveyance is also under challenge.

4. Considering the aforesaid facts and circumstances, particularly, the reasons stated in the application and also the grounds raised in this appeal, the applicant is allowed to withdraw the said amount subject to the final outcome of the suit pending before the City Civil Court.

5. The applicant shall furnish an undertaking before the City Civil Court that in the event the appellant succeeds in the suit, the applicant shall refund the amount with prevailing rate of interest.

6. Civil application stands disposed of.

Appeal be listed on 18.10.2019.

(ANUJA PRABHUDESSAI, J.)