

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

**CIVIL APPLICATION NO. 1271 OF 2019
IN
FIRST APPEAL NO. 86 OF 2019**

Mr. Balwant Ginnappa Thorat ... Applicant
V/s.
M/s. Raja Construction Company and Anr. ... Respondents

Mr. N. P. Bhavsar, Advocate for Applicants.
Ms. Nilima V. Sanglikar, Advocate for Respondents.

**CORAM : K. K. TATED, J.
DATED : 11th OCTOBER, 2019**

P.C.:

1. Heard Learned Counsel for the parties.
2. By this Civil Application, applicant/original plaintiff is seeking permission to withdraw the amount deposited by the appellant/original defendant to satisfy the the Judgement and Decree dated 7th September, 2018 passed by City Civil Court at Bombay in Special Civil Suit No. 542 of 2013.
3. In the present proceeding, the applicant/original plaintiff filed suit before City Civil Court at Bombay for recovery of an amount of Rs. 80,94,168/- with interest @ 24 % p.a. from 16th December, 2011 till the realization of the entire amount. It is to be noted that, in the present

proceedings the applicant filed the suit for recovery of the amount for the work done by him for original defendants.

4. Considering the evidence on record the trial court held that, applicant is entitled sum of Rs. 47,59,865 with interest @ 9 % p.a. Trial court framed several issues including issue no. 4 which reads thus :

“4. Does the defendant prove that the plaintiff was entitled to Rs.80,93,168/- only and the defendant has paid amount of Rs. 81,74,865/- to the plaintiff towards the aforesaid disputed contract given by defendant to the plaintiff for the demolition of the building ?”

5. The Trial Court recorded in para - 15 of the impugned judgment that the applicant/original plaintiff carried out the work to the extent of Rs. 81,74,865/-. Para 15 of the said judgment read thus:

“15. Admittedly, the plaintiff has completed the work, which was assigned to him. As per the defendants, plaintiff has completed the work to the extent of Rs. 81,74,865/-. Therefore, in absence of any cogent and trustworthy evidence regarding completion of work to the extent of Rs. 1,53,43,168/-, defendants are liable to pay Bill amounts of Rs. 81,74,865/- to the plaintiff. Out of the Bill amounts of Rs. 81,74,865/-, admittedly the defendants have paid Rs. 34,15,000/- by cheque to the plaintiff.”

6. Being aggrieved by the Judgment and Decree passed by the Trial Court, the appellant/original defendant preferred the present First Appeal. They also preferred the Civil Application No.4253 of 2018 for stay of

impugned judgment and decree. This court, after hearing both the sides passed the order on 14th December, 2018 staying that the impugned judgment and decree passed by the Trial Court on condition that, appellant/original defendant have to deposit 50% of the decree amount in this court within a period of 12 weeks from the date of order. Pursuant to the said order defendant deposited the entire amount in the registry of this court. Hence, the applicant preferred the present Civil Application for withdrawal of amount.

7. The Learned Counsel Mr. N. P. Bhavsar for applicant submits that, the applicant is suffering from Cataract and the Doctor has advised to undergo the operation of both the eyes. He submits that, the applicant also suffering from Leg-Joint Problems, Spondylitis. Hence, he requires some amount towards his medical expenses. These facts are stated by the applicant in para 4 of the Civil Application.

8. The Learned counsel Mr. N. P. Bhavsar appearing on behalf of applicant submits that, being the money decree passed by the Trial Court, applicant is entitled to withdraw the entire amount with accrued interest. He submits that, in any case in the present proceedings the appellant/original defendant deposited only 50% of the amount as per order passed by this court. He submits that, in the interest of justice this hon'ble court be pleased to permit the applicant to withdraw the amount

deposited by the defendant for his medical treatment.

9. On the other hand, learned counsel Ms. Nilima V. Sanglikar appearing on behalf of Appellant vehemently opposed the present Civil Application. They filed affidavit in reply dated 25th June 2019. Advocate for Appellant submits that, if entire amount is withdrawn by the Applicant, then nothing will survive in the present proceedings. She submits that, as per their contention they are not liable to pay a single penny to the applicant. She submits that, actually the Appellant have to recover the some amount from the applicant. She submits that, all these facts were placed on record before the Trial Court, in spite of that trial court passed the impugned judgment and decree. She submits that, Trial Court failed to consider the cash payment made by the appellant to the applicant/original plaintiff. She submits that, they have a good chance of success in the present matter. On the basis of this submission, the learned counsel for the appellant /original defendant submit that, there is no substance in the present Civil Application and same is required to be dismissed with cost.

10. I heard both the sides at length. Admittedly in the present proceeding, the Trial Court passed the money decree in favour of the applicant. Whether the cash payment made by the defendant to the applicant/plaintiff or not, can be decided at the time of final hearing. At present applicant/original plaintiff required the said amount for his medical

treatment. Considering these facts and the fact that money decree is in favour of the applicant, I am of the opinion that, applicant has made out a case for allowing this Civil Application. Hence, following order.

ORDER

- a) Applicant/Original Plaintiff is entitled to withdraw 50% amount deposited by the Appellant/Original Defendant in the registry of this court as per order dated 14/12/2018 in Civil Application No. 4253 of 2018 with accrued interest without furnishing any security but subject to outcome of the First Appeal.
- b) Civil Application stands disposed of accordingly.
- c) No order as to costs.

(K.K.TATED, J.)