

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

**CIVIL APPLICATION NO.3895 OF 2019
IN
FIRST APPEAL NO.202 OF 2019
ALONG WITH
FIRST APPEAL NO.202 OF 2019**

Shantarm Gangaram Gomane & Ors. .. Applicants

In the matter between

Iffco Tokio General Insurance Co. Ltd. .. Appellant

Vs.

Shantarm Gangaram Gomane & Ors. .. Respondents

Mr.Vikrant V. Parashurami for the appellant.

Mr.T.J. Mendon for the applicants/orig. respondent nos.1 to 4.

CORAM : R.D.DHANUKA, J.

DATE : 16th December 2019

P.C.:

. Heard learned counsel for the applicants and the original appellant.

2. Pursuant to the interim order passed by this Court, the appellant has already deposited the entire decretal amount with MACT, Mumbai. The applicants (original claimants) have prayed for withdrawal of the amount deposited by the appellant.

3. First appeal is not yet admitted. At this stage, I am inclined to permit the applicants to withdraw 50% of the amount that is deposited

by the appellant with concerned MACT, upon furnishing an undertaking before concerned MACT within four weeks from today to the effect that if they do not succeed in this first appeal, they would return the amount that would be withdrawn with interest at such rate as this Court may direct by subsequent order. Copy of the undertaking shall be served upon the learned advocate appearing for the appellant within one week from the date of filing such undertaking. Amount would be withdrawn only after filing such undertaking.

4. It is made clear that if the undertaking is not furnished within four weeks from today, the order passed by this Court allowing the applicants to withdraw 50% of the amount deposited by the appellant to stand vacated without further reference to the Court. In that event, the concerned MACT shall invest the said amount in a fixed deposit of a nationalized bank initially for a period of one year and thereafter for like period after obtaining further orders from this Court depending upon the pendency of the first appeal.

5. The applicants would be at liberty to withdraw the balance 50% of the amount on furnishing solvent security to the satisfaction of the MACT, Mumbai. It is made clear that if the solvent security is not furnished before the MACT, Mumbai within four weeks from the date of the said order passed by the MACT, the balance amount would be

invested by the MACT, Mumbai in a fixed deposit of a nationalized bank initially for a period of one year and thereafter for like period after obtaining further orders from this Court depending upon the pendency of the first appeal. It is made clear that issue of solvent security shall be decided by the MACT, Mumbai after hearing the appellant and the applicants.

6. Civil Application is disposed of on aforesaid terms. No order as to costs.

7. Place the first appeal on board for 'Admission' on 7th January 2020. The appellant is directed to file documents, pleadings and notes of evidence forming part of the record before the MACT, Mumbai with a copy to be served upon other side in advance. Parties as well as the concerned MACT to act on the authenticated copy of this order.

R.D.DHANUKA, J.