

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

**CIVIL APPLICATION NO.539 OF 2019
IN
FIRST APPEAL NO.648 OF 2012**

Smita Ramesh Goradkar .. Applicant

In the matter between

Raghunath H. Bhoir .. Appellant

Vs.

Smita Ramesh Goradkar & Ors. .. Respondents

Mr.Rakesh Sawant a/w Mr.Akshay G. Patkar for the applicant/
orig.respondent no.1.

Ms.Varsha Chavan for the original respondent no.4-United India
Insurance Co.Ltd.

CORAM : R.D.DHANUKA, J.

DATE : 14th November 2019

P.C.:

. By this civil application, the applicant (original claimant) seeks liberty to withdraw the amount deposited by the respondent no.2 pursuant to the interim order passed by this Court.

2. Heard learned counsel for the parties. Application for withdrawal is vehemently opposed by the respondent no.2 on the ground that the appellant is not liable to make payment of compensation to the original claimant. The insurance company did not examine any witness before the Tribunal. The Tribunal has considered the evidence led by the original claimant and the original respondent no.1 and has allowed

the claim of Rs.20,10,000/- along with interest @ 6% p.a. from the date of filing of the application until its deposit in the Court. The Tribunal has also considered yearly income @ Rs.1,20,000/- on the basis of the documents produced by the original claimant. In my prima facie view, though the appellant has examined a witness, the appellant could not prove its case before the Tribunal.

3. After considering the impugned judgment and order passed by the Tribunal, I am inclined to allow the applicant to withdraw the amount in the following manner:-

ORDER

(i) The applicant is allowed to withdraw 50% of the amount deposited by the respondent no.2 with concerned MACT on the condition that the applicant will furnish an undertaking before this Court within four weeks from today to the effect that if the applicant does not succeed in this first appeal, the applicant would return the said amount with interest at such rate as may be directed by this Court. Copy of the undertaking shall be served upon the learned advocate appearing for the respondent no.2 within one week from the date of filing such undertaking. Amount would be withdrawn only after furnishing such undertaking.

(ii) In so far as the balance 50% of the amount is concerned, the applicant would be at liberty to withdraw the said amount upon

furnishing bank guarantee of a nationalised bank in favour of MACT, Thane within four weeks from today with a copy to be served upon the learned advocate appearing for the respondent no.2.

(iii) The said bank guarantee shall be kept alive for five years and thereafter for a like period after obtaining further orders from the Court depending upon the pendency of this appeal. The bank guarantee shall include the interest @9% p.a. during the period of its validity period.

(iv) It is made clear that if the undertaking is not furnished within four from the date of this order, the order passed by this Court allowing the applicant to withdraw 50% of the amount deposited by the insurance company to stand vacated without further reference to the Court. It is made clear the if the bank guarantee is not furnished within the time prescribed, the MACT shall re-invest the balance 50% amount in a fixed deposit of a nationalized bank initially for a period of five years and thereafter for like period depending upon the pendency of the arbitration petition.

(v) It is made clear that the observations made by this Court in this order are prima facie and are made only for the purpose of deciding this civil application.

4. Civil application is disposed of on aforesaid terms. No order as to costs. Parties as well as the trial Court to act on the authenticated copy of this order.

R.D.DHANUKA, J.