

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Application No.2251/2017
in
First Appeal No. 478/2017

Office Notes, Office
Memoranda of Coram,
appearances, Court's
orders or directions
and Registrar's orders

Court's or Judge's orders.

Mr. G. H. Keluskar for the Applicant
Ms. Prachi Khandge i/b. M. P. Vashi & Associates for the
Respondent

CORAM : K.K.TATED, J.
DATED : JUNE 13, 2019

P.C.

1 Heard. By this Civil Application, the Applicant - Plaintiff is seeking permission to withdraw the amount deposited by the Respondent - Defendant to satisfy the judgment and decree dated 28.02.2017 passed by the Bombay City Civil Court at Mumbai in Suit No.7160/2004.

2 In the present proceedings, the Applicant - Plaintiff has filed S.C.Suit No.7160/2004 (High Court Suit No.2364/2004) for recovery of sum of Rs.8,10,000/- along with 10% p.a. interest from the Appellant - Defendant, wherein the Trial Court has framed the following issues:

	Issues	Findings
1	Whether the Plaintiff prove that the Defendant unlawfully collected an	Yes

	amount of Rs.8,10,000/- by various cheques with misrepresentation during the period of May 2001 to January 2002?	
2	Whether the Plaintiff prove that the Plaintiff has separate the claims of the investors and paid the amount to them, as claimed?	Yes
3	Whether the Plaintiff prove that the Plaintiff is entitled to recover the amount of Rs.8,10,00/- (Rs. Eight lac Ten Thousand only) from the Defendant, as claimed ?	Yes
4	Whether the Plaintiff is entitled for further interest at the rate of 18% p.a. as claimed ?	Yes But at the rate of 10% p.a.
5	Whether the suit is within limitation?	Yes
6	What order and decree?	Suit is partly decreed with costs.

3 The Trial Court, after considering the evidence on record held that the Appellant - Defendant is liable to pay Rs.8,10,000/- to the Plaintiff along with further interest @ 10% p.a. from the date of filing the suit till its realisation. The Trial Court has directed to adjust the sum of Rs. 3,00,000/- already deposited by the Defendant in the Trial Court.

4 Being aggrieved by the said judgment and decree, the Appellant - Defendant has filed the present appeal which has already been admitted. The Defendant has filed the Civil Application No.1059/2017 for stay. This court, by order dated 11.04.2017 had allowed the said

Application and directed the Defendant to deposit the entire awarded amount excluding Rs.3,00,000/- in the court. The learned counsel for the Defendant submits that they have already deposited the said amount in the court.

5 The learned counsel for the Applicant submits that the Applicant is a senior citizen. He needs money for his use. He submits that in the interest of justice, this Hon'ble Court be pleased to allow the Applicant withdraw the amount deposited by the Defendant. He submits that the Applicant is ready and willing to furnish the personal bond for refund of the said amount, if he is directed to do so. He submits that if the Civil Application is not allowed, irreparable loss will be caused to them.

6 On the other hand, the learned counsel for the Defendant has vehemently opposed the Civil Application . She submits that in fact, the Applicant has paid Rs.8,10,000/- to him towards the brokerage charges. These facts were not considered by the Trial Court, while passing the impugned judgment and decree. Hence, the present appeal. She submits that the Respondent - Appellant has good chance of success in the matter. If the entire amount is withdrawn without furnishing any security, it will be difficult for them to recover the said amount in case they succeed in the matter. In any case, as the Applicant is a senior

citizen of 74 years old, there is no question of allowing the Civil Application. Same be dismissed with costs.

7 It is to be noted that in the present proceedings, money decree has been passed in favour of the Applicant - Plaintiff. The question is about the withdrawal of the amount. The disputed facts are pending before this court in the First Appeal. Unless and until the First Appeal is decided on merits, there is no question of resolving the those issues. Hence, the Applicant - Plaintiff can be permitted to withdraw the amount by furnishing solvent security to the satisfaction of the Registry till hearing and final disposal of the first appeal.

8 Hence, following order is passed

a. The Applicant - Plaintiff is permitted to withdraw the amount deposited by the Respondent - Defendant along with accrued interest, if any, by furnishing solvent security to the satisfaction of the Registry, on or before 30.09.2019.

b. Civil Application stands disposed of accordingly.

(K.K.TATED, J.)