

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

**CIVIL APPLICATION NO. 43 OF 2019
IN
FIRST APPEAL NO. 1742 OF 2009**

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
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Mr. Rahul Mehta i/b KMC Legal Venture for the Applicant.

Mr. D. S. Joshi for the Respondents

**CORAM: K.K.TATED, J.
DATED : SEPTEMBER 24, 2019**

PC.

- 1 Heard learned Counsel for the parties.
- 2 By this Civil Application, the Applicant/Original Claimant is seeking modification of an order dated 04/12/2009 passed by this Court by which the Applicant was permitted to withdraw the amount deposited by the Appellant/Insurance Company by furnishing the solvent security to the Commissioner for Workmen's Compensation, Mumbai except bank guarantee.
3. The Learned Counsel for the Applicant submits that, though the order was passed on 04/12/2009, till today the amount is

lying in the office of Commissioner for Workmen's Compensation. It is not possible for the Applicant to provide the solvent security. He submits that in an accident which occurred on 23/08/2007, the Applicant sustained injuries. He submits that even the Commissioner has recorded in Para. 17 of the impugned Judgment that the Applicant sustained permanent disability to the extent of 55%. He submits that in view of these facts, the Applicant may be permitted to withdraw at least 50% amount without furnishing any security.

4. The Learned Counsel for the Insurance Company submits that if the amount is withdrawn by the Applicant without furnishing any security, it will be very difficult for them to recover the same if they succeeds. In the First Appeal. Therefore, there is no substance in the present Civil Application and the same is required to be dismissed.

5. It is to be noted that, though this Court passed order dated 04/12/2009 permitting the Applicant to withdraw amount by furnishing security, the same is not withdrawn by the Applicant for want of security. Not only that the Applicant sustained disability to the extent of 55% as

recorded in the impugned Judgment by the Authority.

6. Considering these facts I am of the opinion that the Applicant can be permitted to withdraw 50% amount without furnishing any security to subject to outcome of the First Appeal. Hence, the following order:

The Order dated 04/12/2009 passed by this Court in Civil Application No. 4442/2009 to be modified as under:

- a. The Applicant/Original Claimant is permitted to withdraw 50% amount with accrued interest without furnishing any security but subject to the outcome of the First Appeal.
- b. The Commissioner for Workmen's Compensation is directed to invest the remaining amount in a fixed deposit of any Nationalized Bank, initially for a period of one year which shall be renewed from time to time till further orders.
- c. Civil Application stands disposed of accordingly.
- d. No order as to costs.

(K.K.TATED, J.)