

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.871 OF 2017**

M/s. K.S. Reddy and Company .. Petitioner
Versus
The Executive Engineer and Ors. .. Respondents

Mr. Nikhil Wadikar I/b Nandu V. Pawar for petitioner.

Mrs. P.J. Gavhane, AGP for respondent Nos. 5 and 6.

Mr. N.P. Deshpande for respondent No.1.

CORAM : K.K. TATED, J.

DATE : 25 FEBRUARY 2019.

P.C:-

. Heard learned Counsel for parties.

2. By consent of both the parties matter is taken on board for final hearing at the stage of admission.

3. By this writ petition under Article 227 of the Constitution of India, petitioner/original plaintiff is challenging the order dated 17.08.2015 passed by the learned Civil Judge, Senior Division, Satara below Exhibit-28 in Special Civil Suit No.130 of 2011 rejecting their application to allow them to withdraw a sum of Rs. 14,86,086/- deposited by respondents/original defendant Nos. 1 to 5.

4. The learned Counsel for the petitioner submits that the respondents/original defendant Nos. 1 to 5 admit their liability to

the extent of Rs.14,86,086/- and deposited the said amount in trial Court. Hence, the petitioner/original plaintiff filed application for withdrawal. That application was rejected by trial Court only on the ground that there is no question of passing any decree on admission. He submits that petitioner is not pressing any decree on admission. Main prayer of the petitioner/original plaintiff was that to permit the plaintiff to withdraw a sum of Rs. 14,86,086/- deposited by respondents/original defendant Nos. 1 to 5.

5. On the other hand the learned Counsel appearing on behalf of respondent Nos. 1 submits that they have no objection if the petitioner/original plaintiff is permitted to withdraw the said amount. In support of this contention, he relies on paragraph 2 and 3 of affidavit in reply dated 03.10.2017, which reads thus :

“2. I say that, I confirm the letter dated 14.05.2015 at Exhibit-52 in the Trial Court and Exh. G to the petition. The petitioner has accepted the measurement and the amount of Rs.14,86,086/- deposited. This is clear from the application at Exh.'J' to the petition. The relevant portion reads as under :

“Now, the defendant has prepared final bill & the plaintiff has also accepted final bill net amount of Rs.14.86 Lakh and also that as per Exhibit 49 and 52 the defendant has said that they have no objection for this amount of Rs.14.86 Lakh to be handed over by this Hon'ble Court to the plaintiff.”

3. In the light of the above, this writ petition may be disposed off.”

6. Considering the submissions made by learned Counsel for the petitioners, the affidavit dated 03.10.2017 filed by Executive Engineer of respondent, I am of the opinion that the petitioners have made out case for allowing this writ petition and permit the plaintiff to withdraw the said amount with accrued interest, if any. Hence, following order :

- a) Impugned order dated 17.08.2015 passed by Civil Judge, Senior Division, Satara below Exhibit-28 in Special Civil Suit No.130 of 2011 is set aside.
- b) Application filed by petitioner/original plaintiff below Exhibit-28 in Special Civil Suit No.130 of 2011 is allowed.
- c) Petitioner/original plaintiff is permitted to withdraw the sum of Rs.14,86,086/- deposited by respondents/original defendant Nos. 1 to 5 in trial Court along with accrued interest, if any without any security.
- d) Writ petition stands disposed of accordingly.
- e) No order as to costs.

(K.K. TATED, J.)