

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL APPLICATION NO. 268 OF 2019
AND
CIVIL APPLICATION NO. 483 OF 2019
IN
SECOND APPEAL ST. NO. 9153 OF 2017 (D)

Link House Industries Ltd., thr. Its Managing Director and anr.
..VS..

Narayan Sheshrao Wankhede and ors.

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

Court's or Judge's orders

None for applicants.
Shri P.D. Meghe, Adv. for respondent no. 4.
Shri S.A. Choudhari, Adv. for respondent no.1 and 2.

CORAM : VINAY JOSHI, J.
DATED : 14th NOVEMBER, 2019

Heard.

This civil application is taken out by respondent nos. 1 and 2 who are the original plaintiffs in Special Civil Suit No. 975 of 1994. Another civil Application No. 483 of 2019 is taken out by the respondent no. 4- Arun i.e. original defendant no. 4 of above mentioned special civil suit. The application for withdrawal of an amount which is deposited by the appellant in this Court in pursuance of order dated 23.06.2017.

Initially, both the respondent nos. 1 and 2 (Narayan and Ku. Bulu) had file special suit for money recovery which was partially decreed. The original

plaintiffs i.e. Narayan and Ku. Bulu had filed First Appeal bearing No. R.C.A. 406 of 2015 in which the decree passed by the Trial Court was modified and money decree of more amount i.e. of Rs.11,50,000/- (Rupees Eleven Lakh Fifty Thousand only) was passed. The First Appellate Court directed that on realization of amount, the plaintiffs i.e. present respondent no. 1-Narayan and respondent no. 2- Ku. Bulu alongwith original defendant no. 4 i.e. respondent no. 4-Arun are entitled for the said amount.

Being dissatisfied by the order passed by the First Appellate Court, the original defendant nos. 1 and 3 preferred Second Appeal alongwith delay condonation application. However, this Court vide order dated 17.09.2018 had refused to condone the delay for want of sufficient cause and ultimately, delay condonation application was dismissed. In consequences, Second Appeal is also came to an end. In the Second Appeal at initial stage, in pursuance of order of this Court dated 23.06.2017, the appellants were directed to deposit Rs.5,00,000/- (Rupees Five Lakh only) which they deposited. Since Second Appeal does not survive, there is no difficulty in returning the amount to the applicants, which can be obviously adjusted in the execution petition which the decree-holders have informed to be filed in the Trial Court.

The modified decree passed in Special Civil Suit no. 975 of 1994 in pursuance of R.C.A. No. 406 of 2015 speaks that, the amount as directed on realization be paid to the plaintiffs and defendant no. 4. It means that the amount was to be paid to respondent no. 1-Narayan

(plaintiff no.1), respondent no. 2-Ku. Bulu (plaintiff no. 2) and respondent no. 4-Arun (defendant no. 4). It is submitted on behalf of the respondent no. 1-Narayan that, he is power of attorney holder of Ku. Bulu and he would receive the payment on behalf of her also. Both the learned Advocate submit that the amount of Rs.5,00,000/- (Rupees Five Lakh only) which has been deposited in this Court, be equally distributed in between respondent no. 1-Narayan of Civil application no. 268 of 2019 and respondent no. 4-Arun of civil application no. 483 of 2019. Since, the second appeal does not survive, there is no difficulty in returning the amount to the parties. The parties are permitted to withdraw the amount. Both learned Advocate submitted that, the appellants have not challenge the order of this Court dated 17.09.2018 regarding refusal of condonation of delay, in consequences disposed of the second appeal.

In view of that, both Civil Applications are allowed. Respondent no. 1-Narayan in Civil application no. 268 of 2018 and respondent no. 4-Arun in Civil Application no. 483 of 2019 are permitted to withdraw the amount in equal proportion alongwith interest.

Both Civil Applications are disposed accordingly.

JUDGE

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