IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

925 CIVIL APPLICATION NO.5102/2020 IN FIRST APPEAL NO.693/2020
VINOD RAMESH JADHAV
VERSUS
SHAIKH DAUD SHAIKH MUSA AND ANOTHER

AND
926 CIVIL APPLICATION NO.5103/2020 IN FIRST APPEAL NO.687/2020
ROHIDAS @ ABA JAGANNATH LAMBOLE
VERSUS
SHAIKH DAUD SHAIKH MUSA AND ANOTHER

AND
927 CIVIL APPLICATION NO.5104/2020 IN FIRST APPEAL NO.688/2020
PRAMILABAI BUDHA BHOI AND ANOTHER
VERSUS
SHAIKH AUD SHAIKH MUSA AND ANOTHER

AND
928 CIVIL APPLICATION NO.5105/2020 IN FIRST APPEAL NO.692/2020
VIJAY NAMDEO MAHAJAN
VERSUS
SHAIKH DAUD SHAIKH MUSA AND ANOTHER

929 CIVIL APPLICATION NO.5106/2020 IN FIRST APPEAL NO.691/2020
MAHENDRA MANGU MAHAJAN
VERSUS
SHAIKH DAUD SHAIKH MUSA AND ANOTHER

930 CIVIL APPLICATION NO.5107/2020 IN FIRST APPEAL NO.689/2020
PUNAMCHAND ASARAM MAHAJAN
VERSUS
SHAIKH DAUD SHAIKH MUSA AND ANOTHER
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Mr. M.M. Bhokarikar, Advocate for applicants in all applications.
Mr. Uday S. Malte, Advocate for respondent No.2.
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CORAM: V.L. ACHLIYA, J.
DATE: 21.08.2020

PER COURT :

1] All these applications are filed seeking withdrawal of amount deposited by the appellant – insurance company in terms of order granting conditional stay to execution of award passed by this Court.

2] Heard learned counsel for the applicants and appellant – insurance company.

3] Learned counsel for the appellant – insurance company opposed the applications with contention that the appellant has good case to succeed in appeals. The vehicle in question was not insured with appellant covering the date of accident. The cheque received towards payment of premium was returned dishonored with reason 'funds insufficient' in drawer's account. The intimation of dishonor of cheque and cancellation of cover note was given to drawer of cheque as well as R.T.O. on 28.5.2007. The accident in question occurred on 3.9.2007. Therefore, in absence of any subsisting contract of insurance between the appellant – insurance company and the owner of vehicle, the appellant is not liable to indemnify the respondent no.1 – insured. The claimants are entitled to compensation only as against respondent no.1 – the owner of the vehicle.

4] On the other hand, learned counsel for the applicants – claimants submits that the Tribunal has duly assessed the evidence adduced on their behalf. It is further submitted that for the acts of agent, the appellant – insurance company is liable to indemnify and pay the compensation to claimants.

5] On due consideration of the submissions advanced and the challenge raised in appeals, I am of the view that the appellant – insurance company has strong case to pursue in appeals. If the applicants are permitted to withdraw the amount, the purpose of filing appeals would be frustrated and it will be difficult to recover the amount from them. In that view, the request of the applicants seeking permission to withdraw the amount cannot be entertained. I am, therefore, not inclined to allow the applications.

6] Accordingly, the applications seeking withdrawal of amount filed by the applicants are rejected. However, it is clarified that rejection of the applications for withdrawal of the amount deposited by the appellant – insurance company will not act as an impediment for the applicants to file execution proceedings and to recover the amount from the respondent no.1 – the owner of the vehicle.

7] The applications are disposed of in above terms.

(V.L. ACHLIYA, J.)

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