

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

**CIVIL APPLICATION NO.740 OF 2015
IN
FIRST APPEAL NO.1074 OF 2007**

Shradha Sunil Soman & Ors. .. Applicants

Vs.

New India Assurance Co. Ltd. .. Respondent

Mr.Rajdeep D. Gude i/by M/s.Khandeparkar and Associates for the applicants.

Mr.Devendranath S. Joshi for the respondent/orig. appellant.

CORAM : R.D.DHANUKA, J.

DATE : 18th February 2020

P.C.:

. By this civil application, the applicant seeks modification of the order dated 29th September 2006.

2. It is the case of the applicants that the applicants are not in a position to furnish any security for withdrawal of the entire amount. The applicants however, are willing to furnish an undertaking before this Court if part of amount is allowed to be withdrawn by this Court. Statement is accepted.

3. Heard learned counsel for the parties. Mr.Joshi, learned counsel for the appellant strongly opposes the request for withdrawal of the amount.

4. In so far as the objection raised by the learned counsel for the appellant is concerned, it is not in dispute that this Court had already permitted the applicants to withdraw 50% of the amount of Rs.20 lakhs however, on the certain terms. In my view, there is no merit in the submission of the learned counsel for the appellant.

5. The applicants (original claimants) are permitted to withdraw 50% of the amount of Rs.20 lakhs that is deposited by the appellant with the MACT, Kalyan in M.A.C.P. No.399 of 2001, at this stage, upon furnishing an undertaking before concerned MACT within four weeks from today to the effect that if they do not succeed in this first appeal, they would return the amount that would be withdrawn with interest at such rate as this Court may direct by subsequent order. Copy of the undertaking shall be served upon the learned advocate appearing for the appellant within one week from the date of filing such undertaking. Amount would be withdrawn only after filing such undertaking.

5. It is made clear that if the undertaking is not furnished within four weeks from today, the order passed by this Court allowing the applicants to withdraw 50% of the amount that is deposited by the appellant to stand vacated without further reference to the Court. In that event, the concerned MACT shall invest the said amount in a fixed

deposit of a nationalized bank initially for a period of five years and thereafter for like period depending upon the pendency of the first appeal.

6. The concerned MACT is directed to invest the balance 50% of the amount in a fixed deposit of a nationalized bank initially for a period of five years and thereafter for like period depending upon the pendency of the first appeal.

7. Civil application is disposed of on aforesaid terms. No order as to costs. Parties as well as the concerned MACT to act on the authenticated copy of this order.

R.D.DHANUKA, J.