

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 3441 OF 2019
IN
CIVIL APPLICATION NO. 2945 OF 2018
IN
FIRST APPEAL NO. 1048 OF 2013

Rameshchandra Manoharlal Rungta **Applicant**

IN THE MATTER BETWEEN

Rameshchandra Manoharlal Rungta **Appellant**

VERSUS

Mohammad Jamil Ejahulhak Mansuri & Ors. Respondents

Mr.D.S.Hatle, a/w. Mr.Deepak Jamsandekar for the Applicant/Original Appellant.

Mr.Suraj Naik, i/b. Mr.R.D.Suryawanshi for the Respondent no.1.

CORAM : R.D. DHANUKA, J.

DATE : 29th JANUARY, 2020

P.C.

By this civil application, the applicant seeks recall of the order dated 30th January,2018 passed by this court and seeks condonation of delay of 336 days in filing civil application.

2. Heard learned counsel for the parties and have perused the grounds raised in the appeal memo.

3. After hearing learned counsel for the applicant (original respondent) this court had passed an order dated 30th January,2018 permitting the respondent to withdraw a sum of Rs. 2,00,000/- along

with accrued interest on usual undertaking before the learned Commissioner. Pursuant to the said order, the respondent has already withdrawn the said amount.

4. It is the grievance of the applicant that the respondent was not properly identified before the M.A.C.T. at the time of withdrawal of the said amount and also has not filed any undertaking before the learned Commissioner.

5. The applicant had filed a separate application *inter alia* praying for review of the said order dated 30th January, 2018 and thereafter sought liberty to withdraw the said review application.

6. The applicant has filed this civil application for recall of the order dated 30th January, 2018. In the facts and circumstances of this case, I am not inclined to recall the said order dated 30th January, 2018. The respondent who has already withdrawn the said amount of Rs.2,00,000/- out of the larger amount deposited by the applicant shall file undertaking before the learned Commissioner within two weeks from today to the effect that if the applicant succeeds in the first appeal, the respondent would return the said amount that would be withdrawn with interest at such rate as this court may direct by subsequent order. A copy of such undertaking shall be served upon the applicant's advocate simultaneously.

7. At the stage of filing an undertaking the respondent shall submit a proof of his identity before the learned Commissioner. Only after identifying the respondent, the learned Commissioner shall accept such undertaking. If such undertaking is not filed within a period of two

weeks from today, the respondent in that event shall re-deposit the said amount of Rs.2,00,000/- before the learned Commissioner within two weeks thereafter.

8. Civil application is disposed of in the aforesaid terms. No order as to costs.

[R.D.DHANUKA, J.]