

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 3114 OF 2018
IN
FIRST APPEAL NO. 324 OF 2019

Rekha Hanmant Sarak & Ors. Applicants

IN THE MATTER BETWEEN

**Bajaj Alliance General Insurance
Company Limited Appellant**

VERSUS

Rekha Hanmant Sarak & Ors. Respondents

Mr.M.S.Athalye for the Applicants in CAF/3114/2018/Original
Respondent nos. 1 to 3.

Mr.Milind M. Sathaye for the Appellant.

Mr.Ranjit H. Patil for the Respondent no.6.

CORAM : R.D. DHANUKA, J.

DATE : 29th JANUARY, 2020

P.C.

The applicants have made an application for further withdrawal of the amount out of the amount deposited by the appellant. The appellants have already withdrawn a sum of Rs. 5,00,000/- till date. This court had also permitted the respondent nos. 4 and 5 also to withdraw a sum of Rs.1,50,000/- each who are not the applicants in this civil application. Pursuant to the interim order passed by this court, the appellant has already deposited the entire decretal amount inclusive of interest upto the date of deposit. The applicants have however raised a dispute that there is difference of Rs.85,806/- which according to the applicants is shortfall in depositing the amount.

2. Mr.Sathaye, learned counsel for the appellant disputes the statement made by the learned counsel for the applicants that there is any shortfall in the amount of deposit made by the appellant pursuant to the interim order passed by this court.

3. I have heard learned counsel for the parties at length on the issue of withdrawal of further amount. The application is made on behalf of the applicant no.1 and also two minors to whom the applicant no.1 is representing as natural guardian.

4. It is stated in paragraph (6) that the applicant no.1 is a housewife and has no source of income and applicant nos. 2 and 3 are minor school going children. The said deceased was a sole bread winner.

5. In my view the applicants have thus made a case for further withdrawal of amount of Rs.3,00,000/- however on furnishing an undertaking before the M.A.C.T. to the effect that if the appellant succeeds in the first appeal, the applicant would return the amount that would be withdrawn with interest at such rate as this court may direct by subsequent order. Such undertaking shall be filed within four weeks from today. A copy of the undertaking shall be served upon the appellant's advocate simultaneously. It is made clear that if the undertaking is not filed within a period of four weeks from today, the order passed by this court today permitting further withdrawal to stand vacated without further reference to court.

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

7. The parties as well as the authorities to act on the authenticated copy of this order.

8. Place first appeal on board for admission on 17th February,2020.

9. Both the parties are directed to file compilation of the pleadings, documents and evidence forming part of the record before the trial court in advance and shall serve a copy thereof upon the other side simultaneously.

[R.D.DHANUKA, J.]