

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

**CIVIL APPLICATION NO.464 OF 2019
IN
FIRST APPEAL NO.1108 OF 2019**

Jagannath vishnu Kawade & Anr. .. Applicants

In the matter between

The Municipal Corporation of Gr.Mumbai .. Appellant

Vs.

Jagannath vishnu Kawade & Anr. .. Respondents

Mr.T.J. Mendon for the applicants/orig. Respondent nos.1 & 2.

Mr.R.A. Thorat, Senior Advocate a/w Ms.Sheetal Mane Tadke i/by
Mr.Jernold Joseph Xavier for the appellant.

CORAM : R.D.DHANUKA, J.

DATE : 27th January 2020

P.C.:

. By a separate order passed by this Court, the First Appeal has already been admitted. By this civil application, the applicants pray for withdrawal of the entire amount deposited by the Municipal Corporation.

2. Heard learned counsel for the parties. In paragraphs 4 and 5 of the civil application, the applicants have made out a case for withdrawal of the amount at least to the extent of 50% of the amount deposited by the original appellant. The reasons recorded in paragraphs 4 and 5 of the civil application are accepted.

3. The applicants (original claimants) are accordingly permitted to withdraw 50% of the amount deposited by the appellant with the MACT, Mumbai at this stage, upon the applicants 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from today to the effect that if they do not succeed in this first appeal, they would return the amount that would be withdrawn with interest at such rate as this Court may direct by subsequent order.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 Amount would be withdrawn only after filing such undertaking.

4. 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 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 one year and thereafter for like period after obtaining further orders from this Court depending upon the pendency of the first appeal.

5. 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 one year and thereafter for like period after obtaining further

orders from this Court depending upon the pendency of the first appeal.

6. Civil application is disposed of on aforesaid terms. Office is directed to transmit the statutory deposit of Rs.25,000/- to the concerned MACT expeditiously. Parties as well as the concerned MACT to act on the authenticated copy of this order.

R.D.DHANUKA, J.