

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CIVIL APPLICATION NO. 3504 OF 2021
IN
WRIT PETITION NO. 7956 2020**

Sangamner Merchant Cooperative
Bank Ltd.,
Through its Authorized Officer
Vijay Dayakisan Bajaj ... Applicant.

Versus

Bhausahab Sabaji Nile
and another ... Respondents.

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Mr. A.N. Sikchi, Advocate for the Applicant.
Mr. K.N. Shermale, Advocate for Respondent No.1
Mr. K.N. Lokhande, A.G.P. for Respondent No.2.

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**CORAM : S.V. GANGAPURWALA AND
SHRIKANT D. KULKARNI, JJ.**

DATE : 09th APRIL 2021

PER COURT:-

1. The application is made for withdrawal of amount deposited by non-applicant No.1 pursuant to the order of this Court dated 02.12.2020.

2. Mr. Shermale, learned counsel for non-applicant No.2 opposes the request of the applicant on the ground that the applicant has also initiated the proceedings under Section 138 of Negotiable Instruments Act. The loan was housing loan. Out of Rs.14,00,000/-, more than

Rs.8,00,000/- is already deposited with them and at present Rs.12,00,000/- is deposited as per the order of this Court, still the applicant is proceeding against the non-applicant No.1.

3. The non-applicant No.1 has shown *bona fides* by depositing the amount as directed by this Court. Naturally, the legitimate amount due and payable will have to be paid by the non-applicant No.1 so also the applicant is required to consider the *bona fide* of non-applicant No.1 in depositing the amount.

4. The applicant would certainly be entitled to withdraw the said amount and even if the non-applicant No.1 would succeed in the proceeding, the amount is safe as it is with the Bank.

5. In view of the aforesaid the amount deposited by non-applicant No.1 pursuant to the order of this Court, is permitted to be withdraw by the applicant. The said withdrawal shall be without prejudice to the rights and contentions of the parties.

6. The civil application is disposed of.

(SHRIKANT D. KULKARNI)
JUDGE

(S.V. GANGAPURWALA)
JUDGE

S.P. Rane