

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

933 CIVIL APPLICATION NO.4007 OF 2020
IN SA/407/2019

LEELA MARUTI BIRHADE

VERSUS

CHANDAN SATISH TOSHNIWAL

...

Mr. S.B. Bhapkar, Advocate for the applicant

Mr. R.F. Totla, Advocate for the respondent (appellant in SA)

...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 09th MARCH, 2021.

PER COURT :

1 Present application has been filed by the respondent in Second Appeal for withdrawal of amount of Rs.5,00,000/-, which has been directed to be deposited by this Court at the time of admitting the Second Appeal, filed by the present respondent in the application.

2 Heard learned Advocate Mr. A.B. Bhapkar for the applicant and learned Advocate Mr. R.F. Totla for the respondent.

3 Present applicant is the original plaintiff, who had filed Special Civil Suit No.13/2013 for recovery of amount. Said suit came to be decreed

by 3rd Joint Civil Judge Senior Division, Jalgaon on 10.02.2015. Present respondent, who is appellant in the Second Appeal, was the defendant in the suit. He preferred Regular Civil Appeal No.206/2015 before District Court, Jalgaon. It was decided by learned District Judge-4, Jalgaon and it came to be dismissed on 30.11.2018. The concurrent Judgment and Decree have been challenged in Second Appeal No.407/2019. The said appeal came to be admitted by this Court by framing substantial question of law on 27.08.2019 and the said Second Appeal is pending for its disposal. At the time of admitting the Second Appeal and granting stay to the execution of the decree, condition was imposed that the appellant in the Second Appeal should deposit an amount of Rs.5,00,000/-, within a period of four weeks from the date of the order. The amount was directed to be invested in the Fixed Deposit and to remain till the disposal of the appeal. It will not be out of place to mention here that the decree, that was passed, was directing original defendant to pay amount of Rs.10,55,000/- to the plaintiff with interest @ 6% per annum from the date of the filing of suit till actual realization of the entire amount. Now, the plaintiff has filed the present application for withdrawal of the amount contending that now she is 65 years old and suffers from various diseases including lumber spondylosis and she has been advised to undergo surgery for the knee replacement.

4 Learned Advocate for the applicant submits that the applicant had consulted initially to Dr. Nilesh Patil from Jalgaon, which showed that she is suffering from lumber spondylosis and also osteoarthritis of bilateral knee and needs surgery. It appears that thereafter she has also consulted JJ Plus Hospital, Aurangabad and the said hospital authorities have also advised her to undergo the surgery and the proximate costs that she would be required to be incurred is to the tune of Rs.6,18,000/-. She states that she is in need of money to undergo the surgery, and therefore, she be allowed to withdraw the amount.

5 The affidavit-in-reply has been filed by the present respondent in the application. Taking into consideration the contents thereof and the submissions on his behalf, by the learned Advocate, are on the point that the appellant i.e. the present respondent in the application was directed by this Court to deposit the said amount as a condition to stay the decree and it is not by way of compensation or something like that, which will entitle her to withdraw the said amount. The amount is subject to the outcome of the Second Appeal and taking into consideration the substantial questions of law and the fact that this Court had also directed that the said amount be kept in Fixed Deposit, it would in the interest of both the parties. Even the appeal is expedited, under such circumstance, when the respondent is ready for the

final hearing of the Second Appeal, she need not be allowed to withdraw the said amount.

6 At the outset, it is to be noted that the decree, that was passed against the present respondent, is money decree and he was directed to pay amount of Rs.10,55,000/- with interest. His appeal has been dismissed by the First Appellate Court. No doubt, this Court has now admitted the Second Appeal and framed the substantial questions of law. However, taking into consideration the fact that the decree, that was passed, was a money decree and it has strict rules of stay, but it appears that this Court had directed him to deposit amount of Rs.5,00,000/- only. At the same time, when the two Courts are in favour of the applicant and the documents produced by her on record show that she is in need of money, then she can be allowed to withdraw the said amount, however, with condition to give security in the form of undertaking and solvent surety of like amount. Under such circumstance, the application deserves to be allowed.

7 The applicant is allowed to withdraw the amount of Rs.5,00,000/- together with interest accrued uptill now, which is deposited in Second Appeal No.407 of 2019, by giving undertaking, within a period of two weeks that she would make the said amount good as and when directed in future, by this Court.

8 In case the result of the Second Appeal goes against her, application stands disposed of accordingly.

(Smt. Vibha Kankanwadi, J.)

agd