

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.5386 OF 2021
WITH
CIVIL APPLICATION NO.5485 OF 2021
IN
CIVIL APPLICATION NO.3947 OF 2021
IN
FIRST APPEAL NO.2147 OF 2020

BABY WD/O MANOHAR PAWAR AND ORS
VERSUS
M/S ROYAL SUNDARAM ALLIANCE INSURANCE COMPANY LTD . AND ORS

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Mr. S. G. Chapalgaonkar, Advocate for applicants.
Mr. V. N. Upadhye, Advocate for respondent No.1.
Mr. G. R. Syed, Advocate for respondent Nos.1 to 4 in CA No.7236 of 2020.

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CORAM : SMT. VIBHA KANKANWADI, J.

Reserved on : 19.06.2021

Pronounced on : 29.06.2021

ORDER :-

1. Civil Application No.5485 of 2021 has been filed by the applicants-respondents in first appeal for acceptance of solvency certificates and permission to withdraw amount of Rs.20,00,000/- as per Clause No.3 of the order dated 09.04.2021, whereas Civil Application No.5386 of 2021 is filed for modification/substitution of the word 'surety' with word 'security'.

2. Heard both sides.

3. This Court passed following order in Civil Application No.3947 of 2021, operative part of the said order reads as under :-

“1. The application is partly allowed.

2. The applicants-claimants are permitted to withdraw 25% of the total amount deposited in this Court on furnishing undertaking that in case the Insurance company succeeds in the present appeal, the applicants would pay back / redeposit the said amount as directed by this Court within stipulated period.

3. The remaining 25% of the total amount deposited in this Court is permitted to be withdrawn by the applicants-claimants on furnishing surety to the satisfaction of the learned Registrar (Judicial) of this Court.

4. Registry is directed that the remaining 50% amount shall be invested in any nationalized bank initially for a period of two years and the said period would be extended in case the matter is not finally decided within such period.”

4. Clause No.3 directs that the applicants-claimants to furnish surety for the withdrawal of remaining 25% of the total amount deposited. Amount deposited in view of the award is to the tune of Rs.1,03,78,465/-. As per clause No.1, the amount is to be withdrawn upon undertaking, however, as regards the remaining 25% is concerned, this Court had directed the applicants to give surety. The applicants contend that they are unable to get the sureties as the amount

equivalent to the 25% to be withdrawn under Clause No.3 is Rs.25,95,246/- and, therefore, they want to give their own land as security. They have got the solvency certificate stating that they are eligible to the extent of Rs.20,00,000/- and therefore, they pray for the modification/substitution of the word 'security' instead of the word 'surety' and allowing them to withdraw only Rs.20,00,000/- by keeping the remaining amount of Rs.5,95,246/- with this Court itself till the disposal of the appeal.

5. Taking into consideration the fact that the applicants would give security and for that purpose they have filed the solvency certificate, there is no hurdle in accepting it. The word 'surety' in the order passed in Civil Application No.3947 of 2021 dated 09.04.2021 in respect of Clause No.3 is replaced/modified with the word 'security'.

6. Learned Registrar (Judicial) to accept the solvency certificate after verification and allow the applicants to withdraw amount of Rs.20,00,000/-. Rest of the amount of Rs.5,95,246/- as per the said clause be invested appropriately.

7. The applicants are directed not to sell or create any third party interest or encumbrance on land bearing Gut No.47, at Limgaon, Tq. Paithan, admeasuring 1 Hectare 21 R till the disposal of First Appeal

No.2147 of 2020.

8. With these directions, Civil Application Nos.5386 of 2021 and 5485 of 2021 stand disposed of.

[SMT. VIBHA KANKANWADI, J.]

scm