

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

944 CIVIL APPLICATION NO.4899 OF 2022
IN FIRST APPEAL NO. 975 OF 2012

SHARDA CHANDRAKANT BIDAVE & OTHERS
VERSUS
SHAMSHAD KHAN MOHAMMAD & ANOTHER

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Advocate for the Applicants : Mr.V.B.Anjanwatikar
Advocate for Respondent no.2 : Mr.V.N.Upadhye

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CORAM : S.G.DIGE, J.
DATE : 26.07.2022

P.C. :

1] Heard the learned counsel for the applicants. The learned counsel for the applicants submits that the marriage of applicant no.3 is fixed but the applicants do not have fund for the said marriage. This Court has permitted the applicants to withdraw the amount. Accordingly, the applicants have withdrawn the amount by giving undertaking but the remaining amount, which was granted on furnishing solvent surety, is not withdrawn by the applicants. Out of the said amount, Rs.13 lacs were deposited in Fixed Deposit in Ambika Gramin Bigar Seti Sahakari Patsanstha Ltd. Kedgaon but the Manager and

Management Committee of the said Patsanstha committed fraud and cheated the applicants and other depositors by misappropriating the funds of the Patsanstha. Because of that the complaint dated 23.10.2018 is filed against the Manager and Management Body. The learned counsel for the applicants further submits that the applicants have deposited the said amount with the Patsanstha with object that for the applicant nos.2 and 3's higher studies it would be utilized, however, due to fraud committed by the Manager and Management Body, the applicants have lost their money. The applicants are suffering from financial crisis. Due to COVID-19 pandemic situation, applicant no.1 is unable to conduct private tuition, therefore, the applicants are in dire need of money for fulfilling their day to day survival and met their needs. It is submitted that applicant no.2 is searching job, however, he has not succeeded yet. Applicant no.3 has attained marriageable age, but due to financial crisis the applicants are not in a position to perform her marriage. The learned counsel further submits that earlier this Court has permitted the

applicants to withdraw the amount on furnishing solvent surety but the applicants could not get solvent surety, hence, applicants could not withdraw the amount. If this Court permits the applicants to withdraw the said amount by furnishing undertaking, by modifying earlier order dated 18th December, 2013, it would meet the ends of justice, hence, requested to allow the application.

2] The learned counsel for respondent no.2 submits that respondent no.2 has challenged the judgment and award passed by the Tribunal on various grounds. One of the ground is negligence on the part of the deceased and other aspect is that there were passengers in the truck which gave dash to the deceased. It is breach of policy and the Tribunal has granted compensation on higher side. If the applicants are permitted to withdraw the amount and respondent no.2 succeeds in the appeal, then it would be difficult for respondent no.2 to recover the amount from the applicants, hence, requested to dismiss the application.

3] I have heard both learned counsel. Admittedly, this Court has permitted the applicants by order dated 18th December, 2013, to withdraw the amount by undertaking and by furnishing solvent surety but the said amount could not be withdrawn by the applicants as they could not produce solvent surety. It is the contention of the applicants that the marriage of applicant no.3 is fixed and they require amount for marriage of applicant no.3. It has come on record that the amount deposited by the applicants in Fixed Deposit in Ambika Gramin Bigar Seti Sahakari Patsanstha Ltd. Kedgaon is misappropriated by the Manager and Management Committee and First Information Report is filed against them. There is no other source of income to the applicants. In view of above, I pass the following order:

ORDER

i] The application is allowed. Applicant no.1 is permitted to withdraw the amount of Rs.4 lac along with accrued interest thereon by furnishing undertaking and applicant no.2 is permitted to withdraw the amount of Rs.2

lac along with accrued interest thereon by furnishing undertaking.

ii] Civil Application is disposed of accordingly.

iii] List First Appeal for hearing on 22nd September, 2022.

[S.G.DIGE]
JUDGE

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