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

**CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO. 820 OF 2016**

**IN**

**FIRST APPEAL (ST) NO. 25845 OF 2015**

**WITH**

**CIVIL APPLICATION NO. 821 OF 2016**

M/s. R.P. Gupta Transport Pvt.Ltd. ... Applicant/ Appellant

vs.

Mr Gaurishankar Rambachan Yadav & Anr ... Respondents

**WITH**

**CIVIL APPLICATION NO.3238 OF 2019**

**IN**

**FIRST APPEAL (ST) 25845 OF 2015**

Mr Gaurishankar Rambachan Yadav ... Applicant

vs.

M/s. R.P.Gupta Transport Pvt.Ltd. & Anr ... Respondents

Mr Sameer R Jagtap, Advocate i/b. M/s. Jagtap & Jagtap Advocates for the Applicant/ Appellant.

Mr Amrin Khan, Advocate i/b. Mr Avinash Gokhale, Advocate for Respondent No.1 in First Appeal.

Mr Amol Gatne for Respondent No.2.

**CORAM : GAURI GODSE, J.**

**DATE : 18th OCTOBER 2022**

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**Civil Application No. 820 of 2016**

1. This Application is filed for condonation of delay of 3 years and 130 days in filing the Appeal. First Appeal is filed for challenging the Judgment and Order dated 25<sup>th</sup> November 2011 passed by Labour Court in Application (WCA) No. 40/C-25 of 2008 under Section 4 of the Workmen's Compensation Act, 1923.
2. Learned counsel appearing for the Applicant states that the entire amount as per the impugned Order is deposited in the Labour Court as per the rules.
3. Notice of this Application is served on the Respondents and both Respondents are represented through Advocates today. There is no affidavit in reply filed opposing this Application. However, learned counsel appearing for Respondent no. 2 orally submits that he has strong objection for allowing the present application.
4. Considering the reasons stated in the Application, delay is condoned and Application is allowed in terms of prayer clause (a) which is reproduced below :

“(a) that the 3 years & 130 days delay caused in filing  
the above Appeal be condoned.”

**First Appeal (St) No. 25845 of 2015**

1. Appeal is admitted on the question of law as framed in clause (iii) and (iv) of the Appeal memo.
2. Learned counsel appearing for respondents waive service.
3. Call for R & P.
4. Printing dispensed with.
5. Appellant shall file private paper book within a period of eight weeks from today.

**Civil Application No.821 of 2015**

1. This Application is filed for stay of the execution and operation of the impugned Judgment and Order dated 25<sup>th</sup> November,2011 passed by 12<sup>th</sup> Labour Court in Application (WCA) No. 40/C-25 of 2008 under Section 4 of the Workmen's Compensation Act, 1923.
2. As directed by the Order dated 25<sup>th</sup> November, 2011 learned counsel for the Applicant states that he has already deposited the entire amount as per the impugned Judgment and Order before the trial court. He further states that the amount is already invested in fixed deposit as per rules. Hence in such circumstances this Application is allowed in terms of prayer clause (a) which is reproduced below:

“(a) that pending the hearing and final disposal of above Appeal Execution, implementation and/or operation of the impugned judgment and order dated 25.11.2011 passed by the Commissioner for Workmen Compensation and the Judge of 12<sup>th</sup> Labour Court, Mumbai and further execution proceedings initiated pursuant to the Recovery Certificate dated 19.03.2013 issued by the Commissioner of Workmen Compensation be stayed;”

**Civil Application No. 3238 of 2019**

1. Respondent No.1 – Original claimant has filed this Application for withdrawal of the entire compensation amount along with accrued interest which is deposited as per the impugned Judgment and Order dated 25<sup>th</sup> November, 2011 passed by 12<sup>th</sup> Labour Court in Application (WCA) No. 40/C-25 of 2008.
2. There is an affidavit in reply filed by the Appellant opposing prayer for withdrawal of the amount. Learned counsel for the Appellant states that copy of the Application served upon him does not bear the signature of the Advocate and stamp or signature of the notary. Hence, he submits that the Applicant should be directed to file a proper Application. Perusal of the original copy of the Application shows that it is properly filed and duly signed by the Applicant, his Advocate as well as the notary.
3. Learned counsel for the Appellant further states that similar Application was filed by the Claimant before the Labour Court for withdrawal of the amount and the same was rejected on 23<sup>rd</sup> January, 2017. He further submits that he is in fact not liable to pay the compensation amount and that the liability is entirely on

the insurance company. The Order dated 23<sup>rd</sup> January, 2017 passed by the Labour Court is annexed to the affidavit in reply. Perusal of the same shows that the application was rejected as the appeal was already filed by the Appellant in this Hon'ble Court.

4. I do not find that rejection of that application has any impediment in filing the present Application by the Claimant for withdrawing the amount which is deposited by the Appellant. So far as the objection raised by the Appellant with respect to the liability of making payment is concerned, the same shall be decided at the final hearing of the Appeal.

5. For reasons stated in the Application for withdrawal of the amount and considering the facts and circumstances of the case, I find it in the interest of justice to allow the Applicant/Claimant to withdraw 50% of the entire amount that is deposited by the Appellant in the trial court along with proportionately accrued interest thereto. The Claimant will be allowed to withdraw the amount subject to filing undertaking duly sworn by the Claimant thereby stating that he will refund the entire withdrawn amount in the event any such directions are issued in the First Appeal.

6. Hence following order is passed :

- (i) Applicant/Claimant is allowed to withdraw 50% of the entire amount deposited by the Appellant in the Labour Court vide the

impugned Judgment and Order dated 25<sup>th</sup> November, 2011 passed by Labour Court in Application (WCA) No. 40/C-25 of 2008, along with proportionate accrued interest thereon, subject to and on condition that the Applicant/Claimant files a duly sworn undertaking thereby stating that the withdrawn amount shall be refunded in the event any such directions are issued in the First Appeal.

(ii) The Applicant is directed to serve upon the Appellant, a copy of the Application for withdrawing the amount as allowed by this Order, along with copy of the undertaking that will be filed in the Labour Court.

**[GAURI GODSE, J.]**