

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO.1403 OF 2022
IN
CRIMINAL REVISION APPLICATION NO.251 OF 2021**

Fixity Packaging Industries Pvt. Ltd. And Ors. .. Applicants

Versus

Mrs.Dolly Tehmuras Mistri and Anr. .. Respondents

**WITH
INTERIM APPLICATION NO.1428 OF 2022
IN
CRIMINAL REVISION APPLICATION NO.252 OF 2021**

Kaikhusrus Jehangirji Daruwala
Through Mrs.Dolly Tehmuras Mistri .. Applicant

Versus

Fixity Packaging Industries Pvt. Ltd. And Ors. .. Respondents

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Mr.Yashpal M. Thakur, Advocate for the Applicants in IA 1403 of 2022 and for Respondents in IA 1428 of 2022.

Ms.Ria Lohade i/b. Mr.Abhijit Sarwate, Advocate for Respondent No.1 in IA 1403 of 2022 and for Applicant in IA 1428 of 2022.

Mr.A.R. Patil, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK J.

DATED : JULY 01, 2022.

P.C. :

Interim Application No.1403 of 2022 is preferred by the respondent complainant seeking permission to withdraw the

compensation amount of Rs.40,00,000/-, deposited by the revision applicant in the Registry of this Court. Whereas, Interim Application No.1428 of 2022, is preferred by the complainant for withdrawal of the compensation amount of Rs.50,00,000/-, deposited by the Revision Applicant in the Registry of the Court.

2 The revision applicant has been convicted for the offence punishable under Section 138 of the Negotiable Instruments Act challenging the judgment of the trial Court and the appellate Court. He has preferred revision applications before this Court. The sentence is suspended and the revision applications are admitted by this Court.

3 The revision applicant has deposited an amount of Rs.40,00,000/- towards compensation in respect to Criminal Revision Application No.252 of 2022 and Rs.50,00,000/-, in connection with Criminal Revision Application No.252 of 2021.

4 Learned counsel for the revision applicant and learned counsel for the complainant submitted that the amount deposited by the revision applicant towards compensation awarded by the Court while convicting the revision applicant and the same may be permitted to be withdrawn.

5 Learned counsel for the revision applicant submitted that complainant be directed to give undertaking that the withdrawal shall be subject to outcome of the revision application and the amount would be returned to revision applicant in the event the judgment of conviction is reversed.

6 The complainant has filed affidavit-cum-undertaking of the applicants in Interim Application No.1403 of 2022 and 1428 of 2022. The affidavit-cum-undertaking is taken on record and marked “X”, for identification. In the affidavit-cum-undertaking it is stated that in case the concurrent finding is reversed, the revision applicant will reversed, he will refund the amount in the Registry of this Court.

7 Learned advocate for the revision applicant submitted that in the event of reversal of the judgment of conviction, the complainant shall refund, redeposit the drawn amount of Rs.90,00,000/- in the Registry of this Court alongwith interest accrued thereon from the date of withdraw of the said amount, as per the RBI Guidelines.

8 Considering the aforesaid factual aspects, and the Undertaking filed by the original complainant, I pass the following order:

:: ORDER ::

- (i) The original complainant is allowed to withdraw the amount of Rs. 90,00,000/-, in total in connection with Criminal Revision Application Nos.251 and 252 of 2021, which has been deposited in this Court;
- (ii) The withdrawal of the amount shall be subject to the outcome of the criminal proceeding viz. Criminal Revision Application Nos.251 of 2021 and 252 of 2021;
- (iii) The complainant shall comply the Undertaking filed in this Court;
- (iv) In the event of reversal of the judgment of conviction, the complainant shall refund, redeposit the withdrawn amount of Rs.90,00,000/- in total, in the Registry of this Court alongwith interest accrued thereon from the date of withdrawal of the said amount, as per the RBI Guidelines.
- (v) Interim Application Nos.1403 of 2022 and 1428 of 2022, stand disposed of accordingly.

(PRAKASH D. NAIK, J.)