

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 951 OF 2023 IN
SECOND APPEAL NO. 213 OF 2022

Flexoplast Abrasives (I) Ltd.

Applicant

Versus

Ajitsingh Rghuvirsingh Nirh & another

Respondents

Mr. R. F. Totla, Advocate holding for Mr. S. V. Lohiya, Advocate for
the applicant.

CORAM : R. M. JOSHI, J.

DATE : 31st MARCH, 2023.

PER COURT :

1. By this application, original defendant/respondent in Second Appeal No. 213/2022 is seeking withdrawal of amount of Rs.13,50,000/- deposited by the appellant in this Court. It is contended by applicant herein that the decree under challenge is a money decree and that both the Courts below have held in favour of this applicant. It is also contended that in order to maintain and support the business, withdrawal of amount is necessary.

2. Learned counsel for appellants/respondents herein opposed the application with the submission that in order to ensure refund of amount in case appellants succeed, bank guarantee be obtained against withdrawal.

3. Perusal of record indicates that the suit was in respect of refund of money advanced by plaintiff to the defendants. Both the Courts below have held in favour of the plaintiffs by passing and confirming money decree. The only question remains as to whether bank guarantee is required to be called upon from applicant from the purpose of release of the amount. It is pertinent to note that the order passed by this Court indicates that there was a possibility of settlement between the parties with regard to acceptance of Rs.13,50,000/- which indicates that there would be hardly any dispute about this amount, of course, subject to final decision of the appeal.

4. In the circumstances, withdrawal of amount on undertaking is sufficient. Since the amount deposited in this Court could be kept in Fixed Deposit with any Nationalised Bank, obtainment of undertaking to refund the withdrawn amount along

with interest carried on that amount in Fixed Deposit of any Nationalised Bank, would suffice purpose. Hence, application is allowed in terms of prayer clause 'b' with reads thus :

- b. Office be directed to release an amount of Rs.13,50,000/- to the Applicant and oblige.

5. The aforesaid withdrawal shall be permitted on applicant furnishing an undertaking that in case appellant succeeds in this appeal, the applicant herein would forthwith return the amount withdrawn along with interest which would carry on Fixed Deposit with any Nationalised Bank.

(R. M. JOSHI)
Judge

dyb