

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

49 CIVIL APPLICATION NO. 8774 OF 2023
IN SA/696/2018

MOHMAND ZAHIR ABDUL WAHAB HAKIM
VERSUS
THE MAHARASHTRA STATE TRANSMISSION CO. LTD AND OTHERS

...
Advocate for Applicant : Mr.V.P.Savant
Advocate for Respondents : Mr.Palodkar Devdatt P.

...

CORAM : KISHORE C. SANT, J.

DATE : 28.08.2023.

PER COURT :

1. Heard the parties. This application is for permission to withdraw the amount deposited by respondents/appellants in this Court. The respondents have already deposited an amount of Rs. 1,49,597/- in view of the concurrent decree against the respondents.

2. The application is opposed stating that at the time of admission of the Second Appeal, on stay application an order was passed on 23.01.2019 as below :

"1. The learned Advocate appearing for the appellant has brought to the notice of this Court that while granting stay to the impugned

Judgment and decree condition was put that the decretal amount should be deposited in this Court. The registry is directed to invest the said amount in fixed deposit so that after the decision of the matter, the party should however it may be would receive the said amount with interest. The fixed deposit be made for six months in any nationalized bank.”

3. The learned Advocate for the respondents submits that in view of this order it is clear that the Court had clearly expressed an intention of the Court while granting the stay that the amount will be paid only after the decision of the appeal. This Court finds that however, on that day there was no any application for withdrawal of the amount, filed by the present applicant and the Court was considering only an application for stay to the impugned judgment.

4. Considering the fact that there are two Court orders against the present respondents/appellants, this Court finds that the applicant can be permitted to withdraw an amount to the extent of 75%, however, subject to condition that he shall furnish solvent surety to the satisfaction of the Registrar (Judicial) of this Court. Hence the following order :

ORDER

(a) The Civil Application is partly allowed and disposed off.

(b) The applicant is at liberty to withdraw 75% of the amount with accrued interest thereon, deposited by the respondents, in this Court, subject to furnishing of the solvent surety to the satisfaction of the Registrar (Judicial) of this Court.

(c) The applicant shall also furnish undertaking that in case an appeal is allowed, he shall re-deposit the amount withdrawn along with interest thereon in this Court, within 8 weeks from the date of such order.

(KISHORE C. SANT)
JUDGE

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