

Nikita

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

WRIT PETITION NO.10514 OF 2023

Rajesh Ramkishor Dixit & Ors.

... Petitioners

V/s.

The State of Maharashtra & Ors.

... Respondents

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Mr. Atul Damale Sr. Adv. i/b Mr. Abhishek Matkar a/w
Mr. Malhar Bageshwar for the Petitioners.

Mr. C.D. Mali, AGP for the State.

Mr. Jagdish G. Aradwad (Reddy) a/w Ms. Ashwini B.
Jadhav, for Respondent No.4 to 6.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 30, 2023

P.C.:

1. Challenge in this petition is to the order dated 16th August 2023, permitting defendant Nos. 4 to 6 to withdraw the amount in case, the plaintiff succeeds.

2. It appears that in writ petition No.7821 of 2022, the petitioners sought mandamus to refer proceedings to Civil Judge Senior Division as per provisions of Section 20(H)(4) of Railways Act, 1989. While deciding the said petition, the Division Bench of this Court in paragraph No.7 observed as under:

“ It is made clear that if the petitioners do not obtain any stay against the respondent nos. 4 to 6 herein from the Civil Court in the Civil Suit proposed to be filed for withdrawing the said amount from the Civil Court within six weeks from today, the respondent nos. 4 to 6 would be at liberty to apply

for withdrawal of the said amount. If any such application is made by the respondent nos.4 to 6 for withdrawal of the said amount, the Trial Court to permit the respondent nos. 4 to 6 to withdraw the said amount which shall be subject to the undertaking that would be furnished by the respondent nos. 4 to 6 that if on the conclusion of the Trial Court, the plaintiff succeeds, the said amount shall be refunded on such terms and conditions as the Trial Court may deem fit.”

3. The petitioners thereafter, filed Special Civil Suit No.115 of 2022. In the said suit, application for temporary injunction was filed. The order passed on an application for temporary injunction was challenged up to the Apex Court. The Apex Court in Special Leave to Appeal No.15366 of 2023, observed as under:

“ Since the High Court at the first instance in earlier w/p. No.7829 of 2022, had indicated that if the petitioner herein plaintiff succeeds in the suit, they would be entitled to the amount, it will be refunded. The trial court may explore the manner in which the interest of the petitioner herein who is the plaintiff could be protected by putting the respondent nos.4 to 6/ defendants in the suit to appropriate terms in the event of the plaintiff succeeding in the suit.”

4. The learned Trial Court while permitting defendants to furnish undertaking was considering the request of plaintiff to direct defendant Nos. 4 to 6 to furnish bank guarantee. The Trial Court by impugned order though it fit to permit defendant Nos. 4 to 6 to furnish undertaking along with the supporting affidavit stating that if on the conclusion of trial, plaintiff succeeds, amount of Rs.2,40,98,408/- will refunded to the plaintiff along with the interest at the prevailing rate of nationalized bank.

5. On perusal of the Apex Court’s order, it appears that Apex Court directed Trial Court to decide the terms of withdrawal so that interest of plaintiffs would be protected. The learned Trial

Court exercised its discretion and directed defendant Nos.4 to 6 to file an undertaking stating that in case the suit is decided against them, they will refund the amount along with the interest at the prevailing bank rate.

6. In my opinion, the discretion exercised by the Trial Court, cannot be termed as perverse, calling for interference under Article 227 of the Constitution of India, the writ petition is dismissed.

(AMIT BORKAR, J.)