



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CIVIL APPLICATION NO.2692 OF 2023

IN

WRIT PETITION NO.5370 OF 2006

(Jamil Hussain Biabani s/o Mohammad Abid Hussain Biabani -Vs.- State of Maharashtra and ors.)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Petitioner in-person present.
Mr. M.A. Kadu, Advocate for respondent No.2.
Respondent No.5 in-person present.

**CORAM : AVINASH G. GHAROTE &
URMILA JOSHI-PHALKE, JJ.**

DATED : SEPTEMBER 25, 2023

Heard.

2. This is an application filed by the petitioner seeking to withdraw the amount of compensation deposited by respondent Nos.2 and 3 in this Court.

3. The application is vehemently opposed by respondent No.5 appearing in-person on the ground that though R.C.S. No.115/2004 (Old R.C.S. No.64/2001) (*Abid Hussain s/o Abdul Rahman Biyabani (dead) through L.R's and ors. Vs. Jamil Hussain Abid Hussain Biyabani and ors.*) has been dismissed, there is an appeal filed by the plaintiffs therein, and therefore, the amount should not be paid.

4. It is material to note that R.C.S. No.115/2004 was for a declaration that the property belongs to the

plaintiff, in which it has been held (para 12) that by virtue of the partition deed at Exhibit 171, the suit property was given to the share of defendant No.1, on account of which the suit has been dismissed. Though the dismissal has been challenged in the appeal, it is an admitted position that there is no injunction by the appellate Court. By an earlier order dated 18/02/2005 on Civil Application No.942/2005, the petitioner was permitted to withdraw 50% of the amount which was deposited in this Court. The present application seeks withdrawal of the balance amount. In the earlier Civil Application No.1151/2023 for withdrawal the balance amount, the petitioner has already been permitted to withdraw the entire amount. However, direction has been given to furnish indemnity to the satisfaction of the Registrar (Judicial).

5. In our considered opinion, the order dated 05/06/2023 covers the entire position, and the petitioner is therefore entitled to withdraw the said amount in terms of the said order.

6. The application is accordingly disposed of in terms of the order dated 05/06/2023 passed on Civil Application No.1151/2022.

(URMILA JOSHI-PHALKE, J.)

(AVINASH G. GHAROTE, J.)