



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 1914 OF 2024 IN REVN/53/2024

SURESH MADHUKAR GIRAM
VERSUS
NIRMAL VIJAY JAIN AND ANOTHER

...
Advocate for Applicant : Mr. Girish K. Naik Thigle
Advocate for Respondent No.1: Mr. Sushant V. Dixit
APP for Respondent No.2: Mr. G. O. Wattamwar

...
WITH
CRIMINAL REVISION APPLICATION NO. 53 OF 2024

...

CORAM : S. G. MEHARE, J.

DATE : 07-10-2024

PER COURT :-

1. Heard the learned counsel for the applicant, the learned counsel for respondent No.1 and learned A.P.P. for the State.
2. The applicant has applied for withdrawal of the amount deposited with this Court pursuant to the order of this Court, dated 20.02.2024.
3. The original applicant has objection on the ground that there is no legally enforceable debt. However, both Court erroneously convicted the accused on the presumption under the Negotiable Instruments Act. The presumptions were rebutted. However, neither the trial Court nor the first Appellate Court believed that those presumptions were rebuttable.
4. The proceeding under Section 138 of the Negotiable Instruments Act was opened long back in 2016. Since then, the

applicant/complainant did not get fruits of the judgment which is in his favour. Hence, it would be unjustifiable to deny him the payment of amount deposited with this Court.

5. The learned counsel for respondent No.1 submits that the applicant has some antecedents. So, he may abscond and it would be very difficult to recover that amount. Hence, if the applicant is allowed the condition of bank guarantee may be imposed.

6. Since there are two judgments against the applicant, the Court is of the view that imposing condition of bank guarantee would amount to deprive the applicant from enjoying the fruits of the order. However, the applicant/complainant may be directed to furnish undertaking. Hence, the order:-

ORDER

- i) The criminal application stands allowed.
- ii) The applicant is permitted to withdraw the amount of Rs.5,00,000/- (Rs.Five Lakh) deposited with this Court, with accrued interest, if any, on furnishing an undertaking that he would deposit the money, if the impugned judgments and orders are reversed.

(S. G. MEHARE)
JUDGE