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

**942 CIVIL APPLICATION NO. 6782 OF 2024
IN CARBA/1/2022**

**M/S KALYAN TOLL INFRASTRUCTURE LTD, INDORE
VERSUS
STATE OF MAHARASHTRA, THROUGH CHIEF ENGINEER
PUBLIC WORKS DEPARTMENT AURANGABAD AND
OTHERS**

....

Mr S. S. Patil, Advocate for Applicant;
Mr G. K. Naik Thigle, Special Counsel for Respondents/State

**CORAM : RAVINDRA V. GHUGE
AND
Y. G. KHOBRAGADE, JJ.**

DATE : 9th August, 2024

PER COURT:

1. By this Civil Application, the Applicant, Respondent in the Commercial Arbitration Appeal No.01/2022, seeks leave to withdraw the remainder amount of Rs. 7.5 Crores along with accrued interest, keeping in view, the earlier order passed by this Court, dated 16/06/2023 on Civil Application No.14942/2022. Out of the amount of Rs.15 Crores, deposited in this Court under the order dated 10/03/2022 on Civil Application No.3389/2021, the present Applicant has already withdrawn Rs.7.5 Crores vide the order dated 16/06/2023.

(2)

2. The learned Advocate for the Applicant has strenuously canvassed the grounds set out in the Application. These submissions are no different than the submissions recorded by us when we passed the order dated 16/06/2023. So also, the strenuous submissions of the Special Counsel appearing for the Respondents/State have also been recorded in the same order, which are reiterated today for opposing this Civil Application.

3. This Court had directed the Appellants to deposit Rs.15 Crores. With the extension of time granted, the said amount was deposited by the Appellant/State of Maharashtra. Half of the amount has already been withdrawn by the present Applicant. The learned Advocate for the Applicant submits that the remainder amount may be permitted to be withdrawn and the Applicant would tender a surety. The Applicant is not willing to tender a Bank Guarantee.

4. The learned Special Counsel submits that, after this Court directed the State to deposit Rs.15 Crores, 7.5 Crores have already been withdrawn by the Applicant. If the remaining

(3)

amount is also permitted to be withdrawn, and if the State succeeds in the Commercial Arbitration Appeal before this Court, recovery of the amount, that would be delivered to the Applicant/Original Respondent in Appeal, would be very difficult for the Appellant/State.

5. Since this Court had directed 50% amount to be deposited by the Respondents herein, and out of which, 50% amount has already withdrawn by the present Applicant, it would be appropriate to keep some amount in this Court, by investing it in the Fixed Deposit Receipt (F.D.R.) with a Nationalized Bank.

6. The learned Advocate for the Applicant submits that, if this Court directs a particular amount to be withdrawn, the accrued interest may also be allowed to be paid to the Applicant.

7. Considering the fact situation, we are inclined to permit the Applicant to withdraw an amount of Rs.2.5 Crores out of the remaining amount of Rs.7.5 Crores. The accrued interest as the case may be, would also be delivered to the Applicant and the remainder amount of Rs.5 Crores be invested in a Nationalized

(4)

Bank at Aurangabad, initially for a period of one year, till the decision of the Commercial Arbitration appeal No.01/2022. If the Appeal is decided prior to the maturity of the F.D.R., further orders on disbursing the remainder amount of Rs.5 Crores along with accrued interest, would be passed.

8. In view of the above, **this Civil Application is partly allowed.** An amount of Rs.2.5 Crores along with accrued interest component be permitted to be withdrawn by the Applicant under proper identification of the learned Advocate. An affidavit undertaking would also be tendered that, if the verdict in the Commercial Arbitration Appeal goes against the present Applicant, and if the repayment of the money withdrawn by the Applicant is ordered, such repayment shall be done by the Applicant within a period of 30 days from the date of the verdict of this Court.

9. With the above directions, **this Civil Application is disposed off.**

(5)

10. By the consent of the parties, Commercial Arbitration Appeal No.1/2022, be listed for a final hearing on 19/09/2024, as per the request of the parties. It would be called out after the 'fresh admissions' board is over.

11. We make it clear that, no further Application from the Applicant would be entertained for withdrawal of the remainder amount, until the decision in the Appeal.

(Y. G. KHOBRADE, J.)

(RAVINDRA V. GHUGE, J.)

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