

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1189 OF 2008

Deepak Dattatray Shivankar
Through his Legal Guardian father
Dattatray Khashaba Shivankar ...Appellant

vs.

General Manager,
Maharashtra State Road Transport
Corporation – Mumbai ...Respondent

WITH
INTERIM APPLICATION (ST) NO.27900 OF 2024
[NOT ON BOARD, TAKEN ON BOARD]

General Manager,
Maharashtra State Road Transport
Corporation – Mumbai ...Applicant

vs.

Deepak Dattatray Shivankar
Through his Legal Guardian father
Dattatray Khashaba Shivankar ...Respondent

Mr.Umesh Mankapure a/w Ms.Bhavika Shinde:-	Advocates for Appellant.
Ms.Pinky Bhansali i/b. Mr.C.S. Hegde:-	Advocate for Respondent-MSRTC.

CORAM : S. M. MODAK, J.

DATE : 27th SEPTEMBER 2024

P. C. :-

1. In fact, today this disposed of First Appeal is kept on board. Even, the Respondent-MSRTC has filed an Interim Application bearing Stamp No.27900 of 2024 praying for staying the judgment and decree dated 6th March 2024 passed by this Court. It is taken on board.

2. Heard learned Advocate Ms.Bhansali for the MSRTC and learned Advocate Shri.Mankapure for the Claimant-Appellant.

3. This Court has decided the Appeal on 6th March 2024 (Coram : Shivkumar Dige, J.). The earlier compensation awarded by the Claims Tribunal–Satara was Rs.2,40,000/- (Rupees Two Lakh Forty Thousand) along with other benefits. It was enhanced by this Court to Rs.24,36,719/- (Rupees Twenty Four Lakh Thirty Six Thousand Seven Hundred Ninety) along with 7.5% interest from the date of Petition till realisation.

4. The Respondent-MSRTC has deposited an amount of Rs.64,23,333/- (Rupees Sixty Four Lakh Twenty Three Thousand

Three Hundred Thirty Three) before the Claims Tribunal – Satara.

5. There was an occasion for withdrawal by the Claimant. This was allowed on 21st September 2024. Its copy is given to me. Subsequently, the MSRTC applied for stay. However, it was rejected on 24th September 2024, for the reason that the amount is already released. Its copy is produced for my perusal.

6. On this background, the MSRTC has moved this Court by way of *praecipe* asking for stay. There was an issue, whether the learned Advocate for the Claimant-Appellant is served of yesterdays' circulation or not. The colleague of learned Advocate Shri.Mankapure did attend the Court but after passing of the first order. It is but natural for her considering the time constraint. This Court has recorded her submission and the matter is kept today.

7. Learned Advocate Shri.Mankapure vehemently opposed for grant of any stay for the reason that this Court has become *functus officio* and no stay can be granted. It is also opposed for the reason, till today, the Corporation has not approached the Hon'ble Supreme Court. According to him, even the provisions of Order 41 Rule 5(2) of

the Code of Civil Procedure, 1908 (“CPC”) will not be applicable for two reasons. One, there is no provision of an Appeal and second, stay can be granted only if, moved within a statutory period of Appeal.

8. By way of reply, it is submitted that even though permission is granted to release the amount, still certain compliances are to be made from the Office side. It is submitted that the enhancement by this Court is excessive. She also relied upon the provisions of Section 151 of CPC.

9. Learned Advocate Mr.Mankapure is right that once, the Appeal is disposed of, the Court become *functus officio*. At the same time, it is true that Order 41 Rule 5(2) of CPC permits the Court to stay the decree. There are conditions for staying that decree. The ground for stay is, if the amount is disbursed, then there are hardly any chances of recovery of the amount if the Corporation will succeed before the Hon’ble Supreme Court.

10. This Court has already permitted the Appellant to withdraw 30%. Considering the facts and circumstances, I am inclined to stay the withdrawal for two (2) weeks from today subject to the following

modification:-

- (a) The Claimant-Appellant is permitted to withdraw 70% of the deposited amount along with interest, if any, accrued thereon from the Claims Tribunal – Satara on furnishing an undertaking that the amount will be returned subject to orders passed by any Court.
 - (b) The remaining amount be deposited as per the Rules.
11. In view of that, **Interim Application stands disposed of.**

[S. M. MODAK, J.]