



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 10184 OF 2024
IN
FIRST APPEAL NO. 1268 OF 2022

Mangal Balasaheb Kuchekar. ...Applicant.

In the matter between :

Pepi Fabrics Pvt Ltd. ...Appellant.

Versus

Mangal Balasaheb Kuchekar and Another. ...Respondents.

Mr. Anvil S. Kalekar for the Applicant.

Mr. T. R. Yadav and Divya Wadekar for the Appellant.

Coram : Sharmila U. Deshmukh, J.

Date : September 13, 2024.

P. C. :

1. Interim application has been filed seeking permission to withdraw 50% of the amount deposited by the Appellant before the trial Court, i.e., a sum of Rs.5,52,442.50 paise out of Rs.11,04,885/-.
2. Learned counsel appearing for the Applicant submits that evidence on record substantially establishes that the Applicant has suffered permanent disability and she cannot perform work of tailoring any more which she used to perform earlier and as such there is 100% loss of earning capacity. He submits that the Commissioner has rightly awarded the compensation as there was no negligence on

the part of Applicant.

3. *Per contra* learned counsel appearing for the Appellant opposes the application and submits that if the application is allowed and the Applicant is permitted to withdraw the amount, the same would frustrate the appeal which has been admitted. He would submit that the Appellant would suffer greater prejudice as the fresh proceeding will have to be taken out for recovery of the amount in event appeal succeeds.

4. Considering that the trial Court after consideration of the evidence on record has awarded the compensation in respect of the disability suffered by the Applicant and the fact that appeal is of the year 2022 which is not likely to be heard in near future, the Applicant who has decree in his favour which is in the nature of money decree, cannot be made to suffer due to delay in deciding appeal.

5. In the light of above, the Applicant is permitted to withdraw the 50% of the compensation amount deposited by the Appellant in the trial Court, i.e., a sum of Rs.5,52,442.50 paise out of Rs.11,04,885/-. The withdrawal is subject to furnishing of undertaking by the Applicant to the satisfaction of the trial Court that in event the appeal succeeds, the Applicant would refund the said amount to the Appellant within a period of three months from the date of final adjudication of appeal.

6. The trial Court is directed to invest the balance compensation

amount, namely, a sum of Rs.5,52,442.50 paise with any nationalised bank initially for a period of three years and renew the investement from time to time till the final disposal of appeal.

7. Interim application stands disposed of.

[Sharmila U. Deshmukh, J.]