

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3943 OF 2024

Mohammed Afzal M. Ismail Memon

.. Petitioner

Versus

Ebrahim Haji Yusuf & Anr.

.. Respondents

.....

- Mr. Kalpesh Joshi a/w Ms. Nisha Shah i/by Kalpesh Joshi Associates for Petitioner
- Mr. Neville Majra for Respondents

.....

CORAM : MILIND N. JADHAV, J.

DATE : MARCH 22, 2024

P. C.:

1. Not on board. Mentioned. Taken on board.
2. Perused the praecipe dated 22.03.2024. Heard Mr. Joshi, learned Advocate for Petitioner and Mr. Majra, learned Advocate for Respondents.
3. Today affidavit-cum-undertaking dated 20.03.2024 filed by Petitioner is tendered in Court by Mr. Joshi. Same is taken on record and marked “X” for identification. For convenience and reference, said affidavit-cum-undertaking is scanned and reproduced hereunder for immediate reference:-

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Versus

Ebrahim Haji Yusuf & Anr. ... Respondents

AFFIDAVIT CUM UNDERTAKING OF MR. MOHAMMED
AFZAL M ISMAIL MEMON THE PETITIONER ABOVE
NAMED

I, Mohammed Afzal M Ismail Memon, Age 68 years, Petitioner above named, having my address at 20, Bermuda Apartments, Maratha Mandir Marg, Opp. Reserve Bank Colony Gate, Mumbai-400 008, do hereby solemnly affirm and state as under:

1. I have filed the present Writ Petition challenging the Order passed by the Hon'ble Bombay City Civil Court on 17 February 2024 ("the said Impugned Order") in the Summons for Judgment bearing No. 41 of 2021 ("the said Summons for Judgment") in the Summary Suit No.1057 of 2015 ("the said Suit") whereby by granting Leave to defend the Suit but subject to condition to deposit an amount of Rs.17,50,000/- (Rupees Seventeen Lacs Fifty Thousand

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(2)

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Only) within 30 days from the date of the said Impugned Order.

2. I am filing this Undertaking to state on oath that I will deposit the said amount of Rs. 17,50,00,000/- (Rupees Seventeen Lakhs Fifty Thousand Only) with the Hon'ble Trial Court in instalments within a period of 60 days from today as follows-

Sr. No.	Date	Amount (Rs.)
1.	03/04/2024	1,00,000/-
2.	15/04/2024	3,00,000/-
3.	30/04/2024	3,50,000/-
4.	06/05/2024	5,00,000/-
5.	17/05/2024	5,00,000/-
Total		17,50,000/-

3. Further, I hereby further agree and confirm that in the event I fail to deposit any of the instalment as mentioned hereinabove then the said Suit pending before the Hon'ble Court will proceed Exparte against me.
4. I say that my Advocates on record have explained me the contents and effect of filing this Undertaking and the

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consequences of any default in payment of the above instalments.

Dated this 20th day of March 2024

Solemnly affirmed in Mumbai)

Dated this 20th day of March 2024)

Before Me

Kalpesh Joshi Associates
Advocates for the Petitioner

CRIG. PAN CARD / AADHAR CARD / DRIVING LICENSE
VOTER ID No. 607926120934
✓

Solemnly affirmed before me
re: Mohammed Atsal Ismail Klemen
who is identified before me
by Kalpesh Joshi Associates
whom I personally know
This 20th day of March 2024
High Court, Appellate Side, Bombay

20/03/2024
Section Officer,
High Court, Appellate Side
Bombay

4. In view of the affidavit-cum-undertaking filed by Petitioner, impugned order stands modified accordingly. Amounts stated in the undertaking shall be deposited in the learned Trial Court as per the installments stated in the undertaking. Rest of the impugned order is sustained and remains as it is.
5. Liberty to apply.
6. Writ Petition is allowed and disposed.

Amberkar

[MILIND N. JADHAV, J.]

Digitally signed
by RAVINDRA
MOHAN
AMBERKAR
Date:
2024.03.23
12:11:26
+0530