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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 8535 OF 2024

Mr. Atul Gopal Gupta .. Applicant

IN THE MATTER BETWEEN

Barclays Global Service Centre Private Ltd. .. Appellant

Versus

Mr. Atul Gopal Gupta & Ors. .. Respondents

Mr. Prabhakar Jadhav, Advocate for the Applicant/Respondent
No.1.

Mr. P. G. Sabnis, Advocate for Original Appellant.

Mr. Atul Gopal, Applicant is present through VC.

CORAM : B. P. COLABAWALLA &
ARIF S. DOCTOR, JJ.

DATE : JULY 09, 2024

P. C.

1. On 20th October 2023, the above Appeal was admitted. Thereafter, on 19th January 2024, the execution of the decree which is challenged in the above Appeal, was stayed subject to the Appellant depositing in this Court 25% of the principal amount of Rs.96 Lakhs within a period of 4 weeks from 19th January 2024. In compliance of this

order, the Appellant deposited in this Court a sum of Rs.24 Lakhs on 31st January 2024. Hence the decree passed against the Appellant has now been stayed.

2. The above Interim Application is filed by Respondent No.1 (Original Plaintiff) seeking a withdrawal of the aforesaid amount of Rs.24 Lakhs deposited by the Appellant pursuant to the order dated 19th January 2024.

3. The learned advocate appearing on behalf of the 1st Respondent submitted that the 1st Respondent requires this money for the purposes of paying for the education of his daughter, who has received an offer letter from the London School of Economics. When we inquired from the learned advocate as to how he would secure the aforesaid amount in the event the Appeal succeeds, he stated that he would give an unconditional undertaking to bring back this money within a period of 4 weeks from the date the 1st Respondent is so directed.

4. On the other hand, the learned advocate appearing on behalf of the Appellant, submitted that the 1st Respondent cannot be

permitted to withdraw this amount merely on giving an undertaking. This is more so considering that in the Application itself it is stated by the 1st Respondent that he is in a vulnerable situation who is unemployed and the sole bread earner in the family. He is supporting his entire family including his 85 years old ailing father, his wife, his unmarried daughter and his son who is studying in college, and who are all dependent on the 1st Respondent. He submitted that looking at these averments, it is quite clear that even if the 1st Respondent gives the undertaking, it is very doubtful whether he will be able to honour it. He therefore submitted that if the 1st Respondent is permitted to withdraw the amount of Rs.24 Lakhs, there should be at least some form of security that is furnished by him.

5. When we inquired from the learned advocate appearing on behalf of the 1st Respondent about furnishing some security, he stated on instructions that the 1st Respondent is not in a position to give any security. The only thing he can provide is the unconditional undertaking.

6. We are afraid that on the basis of an undertaking, we cannot permit the 1st Respondent-Applicant to withdraw the amount of

Rs.24 Lakhs. We say this because it is the Applicant's own case that he is unemployed and he is the sole bread-earner and there is every likelihood that in the event the above Appeal succeeds, he will not be in a position to bring back the aforesaid amount.

7. In these circumstances, the above Application is dismissed. However, there shall be no order as to costs.

8. It is needless to clarify that if the 1st Respondent changes his mind and decides to furnish an adequate security, he is free to make a fresh Application seeking withdrawal of the above amount. If such an Application is made, the same shall be decided on its own merits and in accordance with law, uninfluenced by this order.

9. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[ARIF S. DOCTOR, J.]

[B. P. COLABAWALLA, J.]