

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 14985 OF 2024.

IN

FIRST APPEAL NO. 589 OF 2022.

M/s. BLR Logistiks (I) Ltd. ...Applicant.

In the matter between :

Damani Shipping Pvt. Ltd. ...Appellant.

Versus

M/s. BLR Logistiks (I) Ltd. ...Respondent.

Mr. Anant Shinde for Appellant.

Mr. Mukesh Pabari for Applicant-Respondent.

Coram : Sharmila U. Deshmukh, J.

Date : 24th February, 2025.

P. C. :

1. Interim Application has been preferred seeking permission to withdraw the amount deposited by Appellant pursuant to order dated 10th June, 2022 passed by this Court in the present proceedings.
2. Learned counsel appearing for Applicant-Respondent submits that suit was partly decreed in favor of Applicant for sum of Rs. 9,20,992/- along with interest. He submits that bills which were raised upon Appellant were raised in the year 2010 and no objection was raised to the bills. He submits that for the first time, in Written Statement, the bills were disputed and Trial Court after considering the evidence had partly decreed the suit. He submits that First Appeal is

already admitted and as it is a Money Decree, the Plaintiff may be permitted to withdraw the amount, which has been deposited upon furnishing of bank guarantee.

3. Learned counsel appearing for Appellant opposes the Application and would submit that the Trial Court has not considered that there was no Agreement between Plaintiff and Defendant to pay detention charges. He submits that bills which were raised were disputed at the time of filing of Written Statement and Plaintiff is not entitled to any amount. He submits if Respondent succeeds in Appeal, there will be difficulty in restitution and therefore, withdrawal may not be allowed.

4. I have considered the submissions and perused the record.

5. The case of the Respondent to oppose the Application for withdrawal that there was no Agreement between the parties to pay the detention charges, has been considered by the Trial Court and it has been specifically held that when the bills were issued by Applicant, the Respondent did not take any objection regarding the detention charges included in the bill. The Trial Court held that in the present case, the issuance of bills is not disputed and only the amount mentioned in the bills is disputed and it is not the Defendant's case that the entire amount in the bills is false.

6. *Prima facie* from the findings of the Trial Court, it appears that

when invoices were duly raised, no objection was raised to the detention charges, which were included in the invoices and it is only when the proceedings came to be filed seeking recovery of amount, the objection had been taken. The question as to whether the Plaintiff is entitled to the detention charges will be considered at the time of final hearing.

7. At this stage, the finding of Trial Court is in favor of the Plaintiff. The First Appeal is of the year 2022 and arises out of the suit which has been filed in the year 2013. The First Appeal is not likely to be heard immediately. The Plaintiff despite succeeding in the Trial Court cannot be deprived of fruits of the decree by reason of pendency of First Appeal. In interest of justice, the Applicant can be permitted to withdraw the principal amount, which can be secured by permitting the withdrawal upon furnishing of bank guarantee.

8. The Applicant is permitted to withdraw sum of Rs. 9,20,992/- upon furnishing of bank guarantee to the satisfaction of Registrar (Judicial-II).

9. Interim Application is partly allowed in the above terms.

10. Needless to clarify that the copy of the Bank Guarantee be served upon learned counsel appearing for Respondent.

[Sharmila U. Deshmukh, J.]